

1999 APLA Branch Reports



ACT Branch

Richard Faulks,
ACT President



1999 has been a busy year for the ACT members of APLA. The Branch committee has been already involved in two major campaigns to try to resist Government changes which would reduce the rights of injured Canberrans.

In the first place the Government introduced legislation to severely modify the Criminal Injuries Compensation scheme. The Bill sought to effectively abolish pain and suffering payments and reduce other entitlements to victims of crime. Lawyers had been excluded from the consultation process leading to the tabling of the Bill. The Law Society and APLA, together with other lobby groups, staged a campaign which involved lobbying Assembly members to have the Bill referred to a committee. APLA then prepared a detailed written submission and gave evidence to the committee. The result has been a report which recommends that the Bill not proceed in its current form and also recommends the retention of many of the rights which victims have previously enjoyed.

The second important campaign which is only in its infancy relates to proposed changes to the workers' compensation scheme. The Government has tabled an initial discussion paper prepared by ACT WorkCover which proposes significant changes to the scheme, including the severe restriction of access to common law rights. APLA members have been involved in preparing a submission on behalf of the ACT Law Society. Further, the ACT APLA Branch has prepared its own written submission with the help of Simon McGregor. It is anticipated that APLA member Richard Cumpston will be asked to assist by providing detailed analysis of the actuarial data which has been produced by the Government.

The new Branch committee elected in December 1998 has embarked on a campaign to boost ACT membership. The campaign has already resulted in us growing from approximately 20 members to well over 30 members. We recently held a successful APLA dinner and the court reporter for *The Canberra Times*, Rod Campbell, was a guest at that dinner.

The local Branch has produced a newsletter for the first time for ACT members and it is hoped that this can become a regular service to members keeping them advised of progress. It is anticipated that an ACT editor will be appointed shortly for the newsletter.

In summary, APLA is growing in profile in the ACT and is becoming recognised as a body which seeks to protect and enhance the rights of the injured, as well as other plaintiffs. It is hoped that in the coming year we can increase our involvement in special interest groups and continue with our membership drive.

I would like to acknowledge the contribution from the other Branch committee members who have all given up valuable time to assist in the various projects outlined above. ■

Northern Territory Branch

John Neill, NT President

The Northern Territory is a small jurisdiction, having a population of only 190,000 people, with 110,000 of those in Darwin and the surrounding district. This small population nevertheless utilises the services of more than 390 lawyers, of whom 220 are in private practice and the rest in varying forms of government and semi-government employment.

The Northern Territory owns the dubious distinction of being the first Australian jurisdiction to limit its citizens' common law entitlements. We started in 1978 by restricting the common law rights of Territory residents who were injured in motor vehicle accidents, and in 1984 these rights were removed altogether. Instead, a no-fault system of statutory rights has been created by the *Motor Accidents (Compensation) Act*. Now, a Territory resident who sustains any injury arising out of the use of a motor vehicle has no common law rights of any nature whatsoever, against any party whatsoever. There are some small loopholes - injuries arising out of unregistered and uninsured motor vehicles which are not being used on any public street, may still give rise to a common law claim. Also, a clever local lawyer recently established that rights under federal legislation such as the *Trade Practices Act* can override the common law bar in the *Motor Accidents (Compensation) Act*, and accordingly plaintiff lawyers are looking hard at Commonwealth legislation of all sorts these days whenever advising clients who are injured in motor vehicle accidents.

Tourists and other non-Territory residents still retain full common law rights if injured in motor vehicle accidents in the Northern Territory.

On and after 1 January 1987, the Territory workers' compensation system was radically changed by the introduction of the *Work Health Act*. Once again, the Northern Territory Legislative Assembly took away common law rights, this time those arising out of work injuries. An injured worker or a dependant of an injured or deceased worker lost the right to sue the employer in respect of injury or death arising out of or in the course of employment. Plaintiff lawyers immediately commenced litigation against fellow workers of injured workers, on the basis that the doctrine of vicarious liability would oblige the employer to foot the bill in any event. The Territory Legislative

Assembly soon closed that loophole, and the present position is that injured workers and their dependants in the Northern Territory of Australia have no common law rights of any sort against fellow workers or against their employer. We have however retained the right to bring common law actions against third parties in the case of workplace accidents.

The development of the work health system in the Territory has been marked by a degree of paranoia on the part of the government bodies responsible for review of the *Work Health Act*. Instead of enlisting the support of plaintiff and defendant lawyers in the task of making the *Work Health Act* more workable, all private lawyers have been marginalised and amendments to the Act have been made on the basis of recommendations by bureaucrats in committee. The result has been a system of labyrinthine complexity and increasing delays, with no possibility of access by individuals without legal representation, and a nightmare for the insurance industry. Although the system has been rendered excessively complex and suffers from in-built structural delays, nevertheless it favours the injured worker and provides a legal costs structure which makes it possible for plaintiff lawyers to represent injured workers on a speculative basis, and still make a good income at the end of the day. The initial aim of removing common law from the system appears to have been lost however - insurers are experiencing difficulty in making any profit from the system even in the absence of common law pay-outs.

The Northern Territory has a *Crimes (Victims Assistance) Act* which provides a maximum benefit of \$25,000, plus costs at 80% of the Supreme Court scale, for persons injured as a result of criminal actions. The cost of funding this system is borne by the Northern Territory government and there are now rumblings that the availability of these damages will be reduced, and the availability of these damages to members of the police force, and perhaps other accident and emergency service workers, will be removed. This is an outcome which the Northern Territory branch of APLA will be lobbying actively to prevent.

The Northern Territory of Australia has no freedom of information legislation of any nature whatsoever. This is an area of

interest to the NT branch of APLA and we shall continue to lobby in an effort to see something developed in this regard. Interestingly, in medical negligence and personal injuries areas generally, we have never had any difficulty in accessing records held by Territory Health Services, and the use of subpoenas in both the work health and the common law jurisdictions has sufficed in the great majority of cases to provide the information needed in litigation. Problems arise when lawyers wish to investigate matters on behalf of clients without first commencing litigation.

The Northern Territory has always been a highly litigious community, as the number of lawyers per head of population might indicate. Our community is well served by the Northern Territory Legal Aid Commission which manages its finances so as to be able to provide significant funding to investigate plaintiffs' rights in civil litigation, not merely in criminal matters. We have also been able to establish a Contingency Legal Aid Fund, managed by the Northern Territory Legal Aid Commission, which covers out-of-pocket expenses (other than counsel's fees) incurred in the running of civil litigation. Most Territory law firms which act for plaintiffs are prepared to fund litigation on a delayed payment or even a directly speculative basis. This approach is assisted by the generous return provided by the Northern Territory Supreme Court scale of fees which operates in both our Supreme Court and our Local Court. Access to justice in the civil jurisdiction is still genuinely available in the Northern Territory and APLA members are working to keep it that way. ■

Queensland Branch

Ian Brown, Qld President

*A*PLA Queensland faces a monumental year ahead with two major battles to be fought. The Queensland Government, in all its wisdom, following an adverse media bite

accusing lawyers of "ambulance chasing" (via the practice of obtaining referrals from tow truck operators at accident scenes) and the government of failing to act to outlaw the practice, decided to launch a full scale review of the compulsory third party insurance scheme. As most APLA members will be aware, Queensland presently enjoys an unrestricted common law system in relation to motor accidents.

The review process is well under way. APLA has made extensive submissions to the Review Committee opposing any restrictions on common law access. We have had a number of private briefings with the Review Committee to express our particular concerns that the rights of the innocent victims of negligent drivers should not have their rights diminished in any way. APLA believes that the Committee has been receptive to our concerns and we have been specifically asked to make submissions on ways of streamlining the claims process and achieve early resolution of claims.

APLA Queensland has engaged the services of a firm of media, lobbying and advertising consultants to assist us with our CTP campaign and to raise APLA's profile both within the government and opposition and with the general public. Meetings with relevant government ministers are being arranged where we hope to persuade the government that restricting the rights of the injured is not the problem with the continuing viability of the CTP scheme.

APLA Queensland was instrumental in securing the passage of resolutions at the Queensland Law Society Annual General Meeting requiring the Society to be more consultative with its members specifically in relation to the CTP review.

APLA Queensland has also been busy making submissions in relation to the determination by the Queensland government to reform the legal profession.

My thanks to the committee members for their efforts particularly in relation to the CTP review and specifically to Kerry Splatt and Dylan McKimmie for the many hours they have put in formulating policy and preparing submissions.

We can only hope that the government's burning desire to conduct inquiries and reviews will soon exhaust itself. ■

NSW Branch

Cathy Henry,
NSW President



A number of key personal injury areas are the subject of legislative reform in NSW.

By the time this edition of *Plaintiff* hits the press, the new *Motor Accidents Compensation Act* will be operational with its commencement date being 5 October. In the lead-up to the passage of this entirely new piece of legislation, APLA NSW worked successfully to ensure that psychological injury was retained, to some degree, in the new provisions and lobbied key Cross Benchers and the responsible Minister on additional aspects of the Bill. We achieved a high level of media exposure and were the first to have a public briefing on the new Act. Almost 200 people attended our evening seminar on 21 July with speakers including Tom Goudkamp (APLA NSW's Motor Accident SIG chair), Brendan Sydes of Slater and Gordon, Actuary Richard Cumpston and Dr Jonathan Phillipps: a prominent forensic psychiatrist. Interested members can still obtain copies of papers by contacting our Branch Administrator, Kathy Thompson, although it should be noted that Tom Goudkamp's paper was reproduced in the April 1999 issue of this journal. It is important that APLA NSW now works with other key groups in monitoring the effects of the new legislation and agitates for the change which is obviously required. This process has been commenced with our involvement in the Motor Vehicle Injuries Alliance. NSW members will be kept informed of developments through forthcoming editions of the Branch newsletter and members in other states who are interested should contact Hannah Middleton, our Campaign manager.

Just as the Motor Accident legislation was bedded down, we learnt of threatened reform in the area of workers compensation. The recommendations of the Advisory Council were presented to the Government on 31 August and it is understood that the Government has developed its own proposals. We are particularly concerned to hear that there is a risk of introduction of whole person impairment, that

sections 66 and 67 might be amalgamated and that weekly benefits could be discontinued after a 2 year period. Barrister member John Wynyard has been working on the development of our position with Hannah Middleton, we are firing up our State Workers Comp SIG and we have had preliminary discussions with key Cross Bencher in the Upper House, Dr Arthur Chesterfield Evans.

Medical negligence litigation may also be under threat as we have learnt that the Government gave a pre-election commitment to certain sections of the medical profession that reform would be forthcoming by the year 2000 and has accordingly requested the Interdepartmental Review, established back in 1996 and dormant since that time, to deliver its report by the end of this year. We are represented on the Interdepartmental Working Party by Stephen Walmsley SC. Those members wanting further information or wishing to become involved in the work of the Medical Negligence SIG should contact its convenor, Bill Madden, at Blessington Judd Solicitors.

On Saturday 4 September, the APLA NSW Branch Committee conducted a strategic planning session ably facilitated by APLA's national Policy Manager, Simon McGregor. This was an invaluable exercise and will hopefully be run in due course by other Branches around the country as part of a national commitment to ensuring that Branches are assisted to have a greater policy, lobbying and educational output.

With all this activity, roll on December! ■

South Australian Branch

Angela Bentley, SA President

In June the Committee members of the South Australian Branch changed both the venue and the approach to our APLA meetings. We now aim to have six regular breakfast and pre-dinner meetings each year. In addition, if

and when urgent matters arise, urgent meetings will be convened.

Our first breakfast in June at Chesser Cellars in Adelaide proved to be very successful. Mr Andrew Saies, Orthopaedic Surgeon, lectured on new developments in upper limb surgery and Arlene McDonald who has just joined APLA delivered a paper on recent trends in taxation affecting compensation recipients.

Also in June, a Committee from Queensland investigating the various motor accident schemes in Australia came to South Australia and I was invited to provide an overview of a plaintiff solicitor's perspective of the South Australian scheme. I understand that some aspects of the South Australian system may well be considered for implementation in Queensland and so those of us from South Australia who are attending the National Conference will be more than pleased to assist our Queensland counterparts with whatever information they require on motor vehicle accident compensation in this State.

The visit of the Queensland Committee coincided with a visit to Adelaide of Professor Jeffrey O'Connell from the University of Virginia who met with various interested groups, including defendant and plaintiff lawyers at the Motor Accident Commission to explain a Choice of Law scheme he is promoting around the world under which motorists can elect for themselves and their families whether or not they wish to be covered by No Fault Liability insurance or unlimited Common Law coverage.

I organised for Simon McGregor to attend the meeting with Professor O'Connell which had been arranged at the Motor Accident Commission because I believed it was imperative that Simon should directly learn from O'Connell the philosophy behind the Choice of Law scheme.

It appeared to those of us from South Australia that there are indeed a number of drawbacks to this system which Professor O'Connell is promoting.

Recently Leanne Kruger (Director of the Compensation Unit with the Department of Family and Children's Services) and Doug Meikle, Centrelink's Compensation Liason Officer for South Australia, Western Australia and the

Northern Territory, visited Adelaide to familiarise themselves with the various systems of compensation in this State. Ruth Carter and I met with them and it is clear that they wish to develop rapport with both plaintiff solicitors and insurers.

We feel that we have made a good start to the year and we will continue to use our best endeavors to promote APLA's objectives in this State. ■

Western Australian Branch



Sukhwant Singh, WA President

As a result of the Government's announcement of a worker's compensation review late last year, a considerable amount of the work and preparation and lobbying was done in respect of the review and detailed submissions provided by APLA and various members of APLA.

The Report of the Workers' Compensation Review chaired by Desmond Pearson (members were Brendan McCarthy and Robert Guthrie) was published on June 1999 and further submissions were sent to the Hon. Cheryl Edwardes, MLA, Minister for Labour Relations, in respect of the recommendations contained in the Pearson Report. Additionally, APLA is now finalising a workers' compensation model of its own, having received a wealth of information and statistical analysis from the Report of the Standing Committee on Legislation into the *Workers' Compensation and Rehabilitation Amendment Bill 1997 (Donaldson Report)* and the *Pearson Report* (June 1999).

The Government on 20 August 1999 gave notice to the Legislative Council of its legislative response to the Pearson Review and has chosen to add new amendments to the *Workers' Compensation and Rehabilitation Amendment Bill 1997*, purported in response to the *Pearson Report*.

The campaign is now on against the proposed legislative changes which in

some significant respects do not comply with the recommendations of the *Pearson Report*. ■

Victorian Branch

Audrey Jamieson, Victorian President



As this report is being written the State Election is well under way. Most pundits expect the Kennett Government to be returned comfortably and the result will be known before this edition hits the streets. Nevertheless, APLA will be targeting marginal seats, particularly in the country areas, in an effort to keep the issue of common law rights before the electorate and the policy makers. The sad reality however is that it is much easier to fight to retain benefits than to get them reinstated once removed. APLA is asking voters to put the Liberals last on the ballot paper over this particular issue.

As was reported in an earlier edition the Victorian State Conference was a great success both socially and educationally and planning is already under way for next year's conference at Mt. Buffalo.

Plaintiffs rights continue to be eroded in this state. Changes to the FOI legislation have made life more difficult as has the shortening of time limits to appeal certain decisions of the Transport Accident Commission.

We have stepped up our lobbying efforts visiting parliamentarians meeting with the Attorney General and developing links with the Victorian WorkCover Authority. The shadow Attorney General Rob Hulls addressed the State conference pledging the Labor Party to restoring common law rights to seriously injured workers, improving statutory benefits for injured workers and restoring pain and suffering claims for victims of crime. On the other hand, if the Kennett government is returned, rumour has it that further cuts to statutory "benefits" to injured workers will occur.

Belt tightening at National level reduced the number of working hours of our National Public Affairs Manager,

Simon McGregor, by fifty percent. The generosity of member firms has allowed Victoria to take up these lost hours and make use of Simon's policy (and DJ'ing) skills. With Simon's skills submissions have been made to the government regarding proportionate liability and on an independently commissioned WorkCover review as well as preparing briefing papers for the election campaign. ■

Tasmanian Branch

Ken Read, Tasmanian President



The Tasmanian Branch is faced with the possibility of amendments to the Workers Rehabilitation & Compensation Act (1988). Tasmania still retains full common law rights in addition to a reasonable workers compensation system. At its recent conference, the governing Labor Party of this State indicated a desire to change the system "without detriment to the worker".

Members of the Association in Tasmania are aware of differing views within the Parliamentary Labor Party to the effect that it is highly likely that common law rights will come under serious threat with any amendment.

Members of the Association have been meeting regularly to prepare for the possibility of amendments which might affect the present rights of workers and as part of those meetings, we have endeavoured to raise the number of members within the State.

The endeavours have been quite successful recently and we are happy to welcome new members to the Association. I would like to express my thanks to those who have attended our meetings and particularly to Sandra Taglieri for her work in arranging the meetings. I am confident that given the increased numbers and the support of other key lobby groups within the State that the status quo in respect of workers rights when injured in the course of their employment can be maintained. ■

Audrey Graham Jamieson

Profile of APLA Victoria Branch President

Eva Scheerlinck, Dandenong

How can one function at the peak of her career as a Partner at Maurice Blackburn Cashman, be the Victorian branch President of APLA and still have time to play? All work and no play is no fun, as we all know.

Audrey Jamieson, however, seems to have more time in her days than most. She starts early with the morning paper delivered by her K9 courier, Toni, who lovingly brings her the news of world events. There's usually time for exercise and a quick trip to the Victoria Markets before that early morning meeting. And so a day in the life of a Scottish born Aussie begins.

Now in her second term as Victoria's gallant APLA leader, she sings the praises of an association built on sharing, communication and learning. "The thing that attracted me so much to APLA is the relationships developed with other firms in the interests of better representing Plaintiffs. The Litigation at Sunrise/Sunset series and the Conferences at both State and National levels allow for the development and strengthening of such relationships.

"In the next five years I would like to see the membership of APLA double. APLA is already demonstrating its effectiveness as a lobby group, but increasing our numbers will enhance this standing and increase the likelihood that governments will consult with us before embarking on the introduction of draconian legislation. In 10 years I would like to see that APLA's membership numbers and financial stability is secure enough to employ some members of the National Executive so that they may devote 100% of their time to the organisation during the time of their appointments.

"APLA has an important role to play in ensuring that governments are kept accountable to the public. We have to safeguard the public's rights to access the law and justice by not removing their rights to compensation from tortfeasors."



After a successful 14-year long career as a nurse Audrey turned to the practice of law. After completing articles at Holding Redlich, Audrey made the transition to Maurice Blackburn. Personal injuries litigation has been her path all along and indeed she is happy fighting for the rights of injured workers and the rights of Plaintiffs to fair and equitable compensation.

Little Known Fact about Audrey Jamieson: Audrey owned and frequently rode a Suzuki Trail Bike. She still has a soft spot for motorbikes.

Audrey is also a member of the Coordinating Collective of the Women's Legal Resource Group. The Australian Association of Nurse Lawyers is also fortunate to have her dedicated membership, although she admits her involvement there is largely social.

But how does she play? Food and wine are passions she indulges in, and indeed to conduct this interview, Audrey introduced the writer to one of

Melbourne's best kept secrets, Il Solito Posto. Couple those passions with some great music and you will see Audrey light up the dance floor, if you haven't already seen her do so at an APLA function.

Although she concedes she's not very knowledgeable on the subject, she loves art. In fact, Audrey has a Juan Davilia on her dining room wall which she bought at last year's Trades Hall Auction, much to the delight of visitors and the artist himself.

So what does the future hold? While Audrey may not be certain of the future of common law rights in Victoria, she will champion on and encourage others to do the same. And in the event that she finds anyone who can hit a ball with a racket, she may even play some tennis. ■

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