

Emerging law in Australia

BY SIMON MCGREGOR,
NATIONAL PUBLIC AFFAIRS MANAGER



Simon McGregor is the National Public Affairs Manager of APLA. **PHONE** (03) 9640 0722, **FAX** (03) 9601 6580, **EMAIL** smcgregor@apla.com

Introduction: The following is a brief summary of the operational and policy developments relevant to our lobbying program since my last *Plaintiff* report in June.

In an effort to gain greater leverage from our available lobbying resources, APLA has implemented several new projects described in Part A, "Operational Developments".

Meanwhile, the world continued to turn, and our lobbying program progressed as detailed in Part B, "Emerging Law around Australia".

On occasion, we have not achieved final lobbying outcomes we were led to believe would occur, and this highlights the need for our lobbying programs to generate "activism", or direct personal action, from our members. Politicians are less likely to backtrack where they have been shown a genuine ground swell of public interest as opposed to isolated correspondence from an association claiming to speak on behalf of a certain number of members. We must not forget that when we shift from the legal world into the realm of politics, it all becomes a numbers game.

That said, APLA is now more active in the field than ever before, and it seems that our mix of operational development and implementation has improved our productivity.

Thank you all for your continued assistance in developing our lobbying program.

Part A Operational Developments

I. National Policy Agenda

Our umbrella policy document has now been finalised. It is useful as a reference for new campaigners or interested members, and copies can be obtained from smcgregor@apla.com

The document will be reviewed prior to the next Council Meeting. Branches and SIG's are encouraged to contact the National Public Affairs Manager regarding amendments as the need arises.

2. Public Affairs Committee

In an effort to improve APLA's lobbying output, the National Council has created a standing committee to,

- (a) Identify, prioritise and plan lobbying activity.
- (b) Provide scrutiny of lobbying decisions in between National Council meetings, and
- (c) Seek out appropriately skilled APLA members to run specific campaigns.

The inaugural members of the PAC are Kerry Splatt (QLD), Dylan McKimmie (QLD), Terry Stern (NSW), Brendan Sydes (NSW), Patsy Toop (VIC) and Angela Sdrinis (VIC).

PAC will not be responsible for directly conducting various lobbying campaigns itself. The APLA member who has day to day carriage of a particular campaign under (c) will be known as the Campaign Coordinator. The Campaign Coordinator and National Public Affairs Manager will implement campaigns.

Initially, the PAC will consist of two members from each of the three major branches, although other members may be seconded as the need arises. PAC will keep the President apprised of all issues he may be called upon to comment on at short notice, and spread of PAC committee members will provide a broad knowledge of APLA members interests in relation to function (c).

3. Strategic Planning Process

At the National Council meeting on 19 June 1999 it was agreed that the State branches and national special interest groups could achieve greater policy, lobbying and educational output if the National Public Affairs Manager conducted a strategic planning process with each of them.

The strategic planning process will involve three stages:

Preparing the "President's Manual", or "SIG Chair Manual" detailing contacts and sources of information for issues relevant to that APLA body.

Collation of a complete set of the latest data relevant to that APLA body for use in the strategic planning purposes.

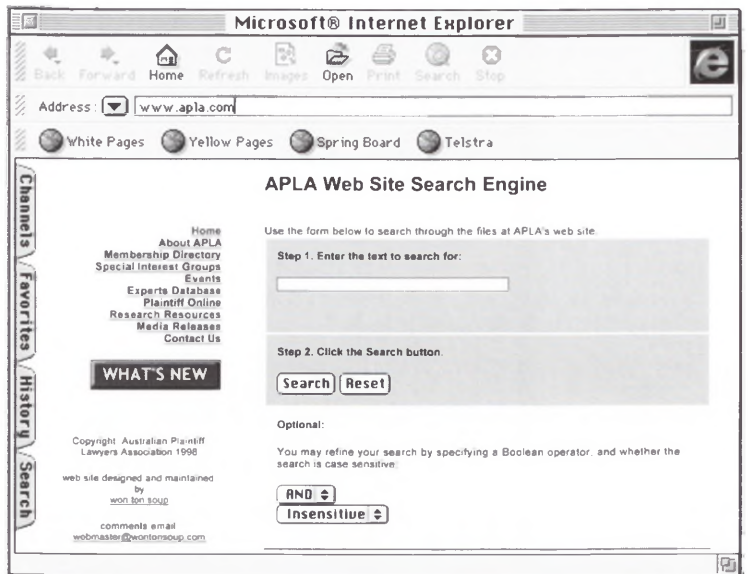
A conference between the Branch President or SIG chair and any other persons they may wish to include, and the National Public Affairs Officer on timetables, campaigning strategies, and resource requirements.

The Presidents' Manual separates State and Federal information, and is organised under the following tabs:

- (a) Political information sources
- (b) Government bodies
- (c) Professional bodies
- (d) Community groups
- (e) Media organisations, and
- (f) General lobbying resources

The SIG Chair manual will contain similar data, cut and pasted to reflect the SIG interest areas. It will also contain the "How to Chair a SIG" document which Bill Madden is developing. That document will include logistical information, sign-off procedures, possible tasks, advice on where to find "hot topics", instructions on using e-mail list and an articulation of what the SIG objective is.

When the manuals and set of the latest data have been col-



lated I will mail it to Presidents and request an appointment in two weeks time when they have had an opportunity to digest the material. The appointment will be for purposes of completing Item 3 described above.

The planning process has now been developed and conducted with the NSW and Queensland Branches. Victoria, Western Australia and the ACT Branches have now received their manuals, although no planning session has been scheduled as yet.

4. "How to Plan an Election"

In the recent times, we have contested a federal election as well as several State ones. There have also been crucial by-elections.

To assist future campaigns, we have developed "A Guide to Planning Elections" and a sample member letter, "Election Action", copies of which can be requested from smcgregor@apla.com

The Victorian Branch also developed the following Members' Briefing Papers for use during our election campaign. These documents may now be readily adapted by other Branches:

- Medical Negligence: Stopping Cruel Cuts
- WorkCover: Victoria's Weak Spot
- Motor Accidents in Victoria: Premiums without Benefits
- Searching for an even break: Defective products in the work place

The papers are about 20 pages each. Members can request copies by email from smcgregor@apla.com, or visit the library section of www.apla.com

5. Email: "About APLA"

Approximately 800 members now receive a weekly update on the activities funded by their membership fees.

The response has been overwhelmingly positive and well worth the few hours each week needed to write the report and deal with the average of ten follow up queries received each week.

Members are encouraged to submit campaign or membership activities for publication to smcgregor@apla.com

6. Web Site

www.apla.com was awarded a "StudyWeb Excellence Award" by the US internet educational resource of the same name.

Many new documents have been posted, and an online membership database, accessible to members only, has been added.

7. Media Log

Increased member lobbying activity has been reflected in greater media coverage for our members despite the lack of any resources at a national level. Our media profile has also been raised by State Branches allocating resources to media on particular issues.

For the first time we received several politically supportive humour media pieces. This is perhaps an indicator that we are raising general consciousness of our issues.

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Part B

Emerging Law Around Australia

I. Workers Compensation

After a quiet year during 1998-9, Workers' Compensation returned to occupy the majority of our lobbying output at the State level. Every Branch except South Australia and the Northern Territory conducted significant work on their schemes.

In WESTERN AUSTRALIA, a political deal seems to have been done between the Government and the unfriendly Upper House, despite our extensive lobbying and their public commitment not to pass only seven days beforehand.

The Bill passed by the Lower House substitutes a 16% disability threshold for the existing \$109,000 monetary threshold access to common law, and now looks set to pass. As has been the case in other lobbying campaigns, it may be that Labor don't want to be blamed for introducing such changes themselves, and so have allowed the Liberals to pass the Bill.

The Bill has not been released to the Government Printer as yet, but may well have retrospective effect, with only a 90 day sunset clause in which to obtain Section 93D leave to proceed at common law under the old scheme for proceedings already commenced. Other features of the Bill include:

- A requirement for an injured worker to irrevocably elect within 6 months whether s/he will pursue a common law claim,
- cessation of benefits for those electing common law,
- reduced rehabilitation allowances,
- Reintroduction of redemptions for non-common law claims,
- Entitlements capped at \$250,000 for the "most extreme case".
- Increased ratings for back injuries by deeming a back rating to be the whole person rating. This means that a back injury assessed at 9.6% whole person will pass the new threshold.

The whole exercise seems barren, with even the Government estimating these cuts will only reduce premiums by less than 10%. The silver lining on the cloud is that APLA's strong campaigning has generated membership growth.

In QUEENSLAND, the Labor government finally reintroduced some aspects of the common law rights lost under the Borbridge Government has finally been passed and commenced 1 July. The Labor Government has fallen short of its pre-election promise to reinstate the Goss Scheme, but has made some changes:

- (a) Definition of Injury. The "major significant factor" test will now be replaced by the "significant contributing factor" test.
- (b) Stress Claims. The "reasonable person" and "ordinary susceptibility" tests will be removed.
- (c) Journey Claims. The "shortest convenient route" and "voluntary assumption of risk" provisions will be removed. Definition of "worker".
- (d) The "Contract of service Test" will be restored replacing the "PAYE" test.

In addition there are new provisions to be introduced altering premium rates, self insurance, and self rating.

A full summary of the changes together with a copy of the Act as passed should be available on the Departments web page- <http://www.workcover.qld.gov.au/opening.htm>

In NEW SOUTH WALES, the State Government is currently negotiating with the Trades and Labor Council about changes to the existing system. The Government was not enthusiastic about the Advisory Council's recommendations for reform, and is rumoured to be preparing legislation which ignores those recommendations. APLA met with Opposition Leaders Chirkarovski and Souris, and will continue the visits program

Work injury law backed

ONE of the most significant policy reversals under a Labor government will be the return of the right to sue under common law for seriously injured workers and motorists.

Under WorkCover and Transport Accident Commission legislation, workers do not have the right to sue their employer or another driver if seriously injured in an accident that was not their fault.

The Kennett Government abolished this common law right in 1997.

Under the replacement compensation scheme, manufacturers of faulty goods, negligent drivers and employers with unsafe workplaces can avoid being sued by workers.

The prescribed regime of statutory benefits is, in some cases, up to \$300,000 less than previously available.

By **ANDREW PROBYN**

And for many injured workers or drivers, WorkCover weekly payments run dry after two years if they are considered to have some prospect or capacity to work.

The Australian Plaintiffs Lawyers Association and unions welcomed the return of the common law rights to sue.

"We are not talking here about open slather litigation for injuries at work. We're talking about providing fair and just compensation for those seriously injured," the association's Victorian president, Ms Audrey Jamieson, said.

Trades Hall Council secretary Leigh Hubbard said concerns that returning common law rights to workers would result in windfalls to lawyers and doctors could be tackled by capping legal and medical costs able to be billed.

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Strategic
NEWS

APLA MEDICAL NEGLIGENCE SPECIAL INTEREST GROUP CONFERENCE

30-31 MARCH 2000
GRAND HYATT MELBOURNE

An essential two day conference examining
the major issues affecting Medical Negligence
Litigation for plaintiff lawyers

KEYNOTE ADDRESS

Addressing the current hysteria & attack on
Common Law Rights
Jack Rush QC

CAUSATION & THE LAW • LIFE PLANS • WRONGFUL BIRTH • OBSTETRICS
LAPAROSCOPIC SURGERY • EYE SURGERY • EXCIMER LASER SURGERY

OTHER SPEAKERS INCLUDE

Prof. David Crankshaw
Michelle French
Dr Charles Siles



Australian
Plaintiff Lawyers
Association

FOR FURTHER INFORMATION **TAMARA DICKSON** Fax 02 9929 2541 EMAIL TAMARA@STRATEGIC.NET.AU
OR MAIL TO PO BOX 1060, NEUTRAL BAY NSW 2089

with other selected Parliamentarians. At this stage our primary concerns are minimising:

- erosion of common law,
 - use of medical panels which restrict legal adjudication,
 - introduction of the AMA Guides.
 - premium increases arising from the shift to private insurers,
- Victoria experienced the first state election since the abolition of common law rights in November 1997. Despite media predictions of a landslide Liberal win, a huge upset occurred with the electorate returning a hung Parliament. The pro common law ALP Government has since improved its position with two By-Election victories, including one in the ex-Premier's blue blood seat.

The Victorian Branch raised approximately \$50,000 to campaign for the restoration of common law rights for seriously injured workers in the main election and the subsequent By-Elections. In the main election they targeted only the Ballarat region. All four lower house and both upper house seats changed, with APLA being the only non-aligned 'interest group' campaigning in the area.

ABC Radio and 3LO have credited APLA with being a 'factor' in the election result. We have coordinated local APLA members and injured clients to lobby each of the three independents now holding the Parliamentary balance of power. Our message is that, on average, a member of 28 families in their own electorate suffers a serious work injury each year, and common law damages are needed to facilitate their recovery.

The Branch also ran an additional campaign in the seat up for by-election which will ultimately decide who governs the state. Our campaign will include a direct mail letter from a local injured person to each electorate household, and radio and press advertising to support the message. We estimate the Branch will have raised and spent approximately \$40,000 on the campaign by the time it is completed.

In the ACT, a WorkCover scheme review which includes introducing a 25% whole person impairment threshold and a \$250,000 non-economic damages cap. Also under consideration are tightening causation to require employment to be a 'significant contributing factor' and setting schedules for legal fees.

Potential positives include increased weekly benefits and increased regulation of insurers. The review is proceeding slowly, with insurers already being criticised for being unable to provide adequate claims data from the last eight years to enable a proper assessment of the scheme to be made.

Another important development to watch will be the Legislative Assembly's parliamentary inquiry into employer fraud and premium evasion.

Finally, TASMANIA received the best news of the season, with feared amendments to common law not eventuating, and an ACCC investigation into insurer pricing policies launched.

2. Motor Vehicle

In NEW SOUTH WALES, APLA has secured significant concessions in the reform package put together following the State election. The *Motor Accident Compensation Act 1999* now

introduces,

- a 10% permanent impairment threshold for non-economic loss damages,
- an economic loss weekly benefit cap of \$2500,
- the 4th Edition AMA Guides,
- one medical assessment regardless of how varied their injuries are, and
- severe cost burdens on plaintiffs who do not settle early.

Positive aspects of the legislation included earlier payment of medical expenses, quicker decisions on liability and funding for commercial care in appropriate cases.

APLA campaigned both in public and behind closed doors. We achieved numerous radio and print media hits, held public seminars and initiated a letter writing campaign. The campaign team also briefed key MP's Della Bosca and Chesterfield-Evans, as well as the Cross Benchers and the Opposition.

APLA did not rest when the legislation was passed. We responded to the NSW Government media release claiming "mission accomplished" on reducing CTP premiums with a "mission impossible" release emphasising the hardship to injured persons the changes will cause. APLA is also lobbying the MAA to develop a list of 'deemed' injuries to overcome threshold and AMA Guide problems, and allowing for future deterioration of injuries so that claims are not delayed due to a possibility of later deterioration.

The QUEENSLAND Branch has campaigned in an extensive CTP review considering cost containment measures. Key issues are,

- New ethical rules to prevent the current 'tow truck' system continuing. APLA's code of conduct will be submitted as a model.
- Restricting "loss of consortium" in *Griffiths v Kirkemeyer* claims.
- Correcting existing procedural difficulties, especially where defendants resile from admissions made prior to the issue of claims.
- Making the limitation period in the Act consistent with the *Limitation of Actions Act*.

The inquiry traced many problems to the tow truck industry and a small group of non-member 'ambulance chaser' law firms. The interim response is that tow truck operators in Queensland will be fined \$375 for providing tip-offs about accidents to 'ambulance chasing' lawyers or panel beaters, in conjunction with a maximum fee of \$182 for a standard 50km tow from an accident scene, including three days' storage.

The final review will make recommendations on action to prohibit soliciting injured persons, as well as a generally examining the scheme's

- Financial viability,
- Balance between injured persons and premium payers,
- Efficiency,
- Liability model (i.e. common law, no fault etc),
- Encouragement of prevention and rehabilitation, and
- Statutory levy capacity.

Further, the review is a National Competition Policy Review,

so that any restrictions on competition must be removed from the legislation unless they can be demonstrated to have a public benefit which outweighs the cost of restricting competition.

APLA has persuaded the Law Society to support our key recommendations on costs (accepting restrictions on claims less than \$20,000) ahead of those from its own Accident Compensation Committee (accepting restrictions on claims less than \$50,000). APLA was also able to show the MAIC analysis of costs was not accurate in regard to lesser claims.

The CTP Review Committee is now indicating they will not recommend restricting common law access. Instead, they support restrictions on recovery of legal costs, anti-touting laws and restrictions on lawyer advertising, with a further review in 12-18 months to see if these measures have the small claims costs blow-outs. APLA will continue to participate in the review process.

In SOUTH AUSTRALIA, APLA attended closed briefing session convened by the MAC on Choice Auto Insurance Schemes, which essentially offer reduced premiums in return for abolition of all pain and suffering payments and caps on economic loss. Those wishing to retain full compensation must take out expensive additional cover. The MAC retained University of Virginia Professor Jeffrey O'Connell, who was one of the key architects on no fault schemes in the 60's and 70's, to talk about this latest scheme. Via ATLA we have been monitoring this issue for some time, but this is the first time we have heard it mentioned in Australia. In the US, the Bill has stalled in the Senate for the second time and is unlikely to pass, although it may become an election issue when Clinton resigns.

In VICTORIA, we experienced two scheme amendments without community consultation. Firstly, the *Tribunals and Licensing Authority (Miscellaneous Amendments) Act 1998* reduces from twelve months to just twenty-eight days the time for reviewing certain decisions by TAC to the VCAT - including decisions under section 23 for rehabilitation, and section 70 for rejecting the claim.

Secondly, section 60 was amended to reduce compensation for domestic assistance from average weekly wage levels to "reasonable costs".

APLA also obtained some election media coverage highlighting that up to 40,000 people who drive whilst working are no longer eligible to receive the common law damages for serious injuries, despite paying a registration fee to cover the same. The TAC seems to be paying the additional money straight into the Government's consolidated revenue.

In the ACT, The Law Society, APLA and NRMA have developed new guidelines for unlitigated claims which are intended to improve the efficiency and speed of claims handling. The guidelines say,

(a) Solicitors must notify the insurer within 28 days of receiving instructions. Thereafter, an initial offer of settlement and all subsequent correspondence will be addressed to the solicitors, unless it has remained unanswered for 42 days,

- (b) Full particulars of the claim must be provided to the insurer within six months of receiving instructions, and the insurer must admit or deny liability within six months of receiving notification of the claim,
- (c) The insurer will fund interim rehabilitation whilst the claim is unresolved,
- (d) Medical reports on which either party wishes to rely must be served within 2 months,
- (e) Any settlement offer must be replied to within 28 days, and costs can be taxed if they remain in dispute 3 months after settlement.

Copies are available from the Law Society.

3. Health Law & Medical Negligence

3.1 AMA Liaison

The APLA Medical Negligence SIG has now met with both the National and NSW Branches of the AMA to discuss areas for possible cooperation.

Issues on the agenda were compulsory insurance, medico-legal fees, access to records, structured settlements, tobacco injuries, statutory scheme restrictions on medical treatment, professional negligence court lists, expert evidence and litigant anonymity.

3.2 NSW Interdepartmental Review of Health Professional Liability

This long running review was resurrected following the NSW state election, although there is still no date for final submissions, let alone any report. Bill Madden and Stephen Walmsley S.C. have been participating on APLA's behalf.

The scope of the review is wide, covering every aspect of the medico-legal interface. To date no real new evidence has been produced in the review, although we shall participate fully because of the possible implications for this area of practice as well as the whole common law system.

3.3 Cosmetic Surgery

The NSW HCCC published "The Cosmetic Surgery Report", which estimated that 200,000 such procedures were carried out in Australia during 1998. The report endorsed APLA's submission that an effective regulatory scheme was needed to cover this field. The report recommends establishing an independent Cosmetic Surgery Credentialing Council which would set credentialing standards, provide consumer information, limit advertising, establish informed consent procedures, and ban cosmetic surgery as a lottery prize. Membership of the CSCC would be voluntary and open to all parties currently permitted to perform procedures, on the proviso they demonstrate adequate insurance.

A Parliamentary response has not yet been tabled.

3.4 Health Insurance Commission

Despite plaintiff and defendant lobbying at the national and state level, the HIC will not reverse its move to adopt the restrictive interpretation of the discount provisions in section 24(8) of the Act, applying them only to express cases of con- ►

tributory negligence.

The UK Government is considering the introduction of a similar scheme. We have provided APIL with information to assist their lobbying efforts.

3.5 Adverse Treatment Outcomes

In other developments, the Senate Community Affairs References Committee will report by 30 June 2000 on, inter alia, how to reduce mistakes in hospital. The inquiry committee will be chaired by Labor's Senator Rosemary Crowley.

3.6 Case Law

In the UK, House of Lords has ruled unanimously recently that parents cannot recover compensation for the costs of bringing up a child born as a result of a botched sterilisation. See *Macfarlane v Tayside Health Board* at www.pressrelease.com.au/release.asp?prid=3869&alart=y

4.3 Structured Settlements

Although the Victorian Government is yet to respond, all other State Governments, the Federal back bench and the AMA now support the introduction of Structured Settlements. Necessary adjustments to the Tax scheme must be approved prior to the completion of the budget papers in April.

4.4 Non-economic loss payments

APLA made a submission to the Senate Community Affairs Committee on the *Non-economic Loss Bill*, and were then invited to give oral evidence at the hearing.

The Bill was not yet been reached in the House of Representatives. In any event, we understand Labor and the Democrats will block it in the Senate.

Injuries Australia also prepared a submission and gave evidence. APLA also assisted other Pensioner groups to prepare their own submissions.

4.5 Conditional Fees

The Victorian Legal Ombudsman met with APLA to discuss emerging consumer issues with conditional fees. She was impressed by the APLA code of conduct, and agreed it set praiseworthy general standards for avoiding misrepresentation. She also said that in the existing climate, conditional fee agreements were generally beneficial to the community in facilitating access to justice.

In her view, the main problems with conditional fees were that disbursement liability was not adequately within the banner "No Win, No Fee" was not adequately explained, and that the banner "No Win, No Pay" was a misrepresentation where clients were liable for disbursements regardless of the outcome. No further action was contemplated by her Office at this stage.

5. Tax Reform

We received no replies to correspondence directed to the Treasurer concerning the adverse effect of the GST on access to justice.

On a brighter note, Assistant Treasurer Rod Kemp said the Tax Act would be amended so that interest on personal injuries compensation could not be taxed.

6. Consumer Law & Class Actions

There is a 'cut and dried' case of discrimination where women are charged more than men for similar haircuts. Simon McGregor was the male guinea pig in the Consumer Law Centre's test case against Edward Beale Salons, where complainant Amanda Atkins was charged 50% more than Simon despite asking only for a trim and having similar length hair. It is hoped that the action will encourage hairdressers to vary prices according to skill, not gender.

At the time of circulating this bulletin, the story had reached an estimated Australian audience of 8 million people, and has been picked up by TV and print media in the US and UK.

The media success of this simple test case shows the value of public interest litigation in raising our profile so that our submissions on more mundane topics will receive greater

APLA Web Site Search Engine

We received no replies to correspondence directed to the Treasurer concerning the adverse effect of the GST on access to justice.

4. Litigation and the Common Law

4.1 Proportionate Liability

The Victorian Attorney-General review of joint and several liability in the civil jurisdiction was postponed due to the state election, and does not seem to be a priority for the new Government.

4.2 Public Liability

The Western Australian Government has moved limit individual police officers' personal civil liability under a new bill read for the second time on 9 September, 1999. The key features of the *Acts Amendment (Police Immunity) Bill 1999* are:

- full protection from civil action for sworn police officers who perform their functions without corruption or malice;
- the ability for an innocent third party to seek compensation for any injury or loss arising from an action of a member of the WA Police Service, which is negligent but neither malicious or corrupt;
- a provision for any police officer who does not cooperate fully with the Crown in defence of such civil wrong to be liable for the cost incurred to defend the action as well as any awarded damages;
- Treasury to pay damages (other than exemplary or punitive) where the officer has acted maliciously or corruptly and there is little prospect the officer can pay;
- the Crown will not be liable for any action deemed corrupt or malicious; and
- the Crown will not be liable for exemplary or punitive damages.

political attention.

Damian Scattini (QLD) has taken over the Chair the Law Council of Australia's Consumer Law Committee from Rob Davis. We thank Rob for his courageous work on this committee.

The Committee has delivered a submission to the Commonwealth Treasury's *Inquiry on Industry Self Regulation* arguing that to date, self regulating bodies have accorded their own interests priority over consumer rights, and have utilised such processes for their own advantage, rather than mutually beneficial market outcomes. Consumers have not been delivered improved outcomes to correspond with lowered regulatory costs, and do not have the resources to,

- Understand their rights,
- Enforce their rights,
- Sift through irrelevant information, or
- Demand relevant information.

Enforceable regulatory frameworks with funded consumer advocates are necessary to protect consumers' rights.

The Committee's next project will be to participate in the Office of Small Business review of the Franchising Code of Conduct.

7. Tobacco

The landmark action, claiming negligence and misleading and deceptive action from Phillip Morris, Wills and Rothmans, on behalf of six individual smokers representative of up to 60,000 other plaintiffs, commenced in the Federal Court in Sydney.

In the US, the Federal Government has followed the States' lead and filed suit against the tobacco industry to recover health care costs associated with treating smokers. The Statement of Claim contains anti-racketeering pleadings similar to those used against organised crime family leaders.

This increases the pressure on Australian Governments, who remain inactive on the issue.

The public interest aspect of the tobacco issue will now be pursued in an additional Federal Court representative action prepared by the Tobacco Control Coalition Inc.

It is an application by 65 named health and medical groups, as well as currently unnamed Australian residents who are diagnosed with smoking injuries in the future, to commence a new representative proceeding against the same three major Australian cigarette manufacturers responding to the claim on behalf of existing smokers. The application is based on misleading and deceptive conduct by the respondents, and seeks \$500 million in the first year to establish a tobacco control program.

8. Victims of Crime

In the ACT, the *Victims Compensation Amendment Bill*, effectively abolishing pain and suffering compensation, was passed after an Independent MP, himself an ex-police officer, agreed to an amendment which allowed police officers and serious sexual assault victims to continue to claim pain and suffering. This was a saddening result after APLA's prominent lobbying and letter writing campaign appeared to have convinced the Legislative Assembly that the Bill was unjust and unpopular.

Ironically, Victoria now looks set to restore pain and suffering payments. The ALP have pledged to restore the crimes compensation system, but to date there has been no legislative activity on the issue.

9. National Competition Policy

The Senate Select Committee *Interim Report on the Socio-Economic Consequences of the National Competition Policy* was released in September, adopting numerous points raised in the APLA submission. The Report states,

- At p.xi, "The Committee is aware that NCP has been used as an excuse by some agencies to realise other policy objectives."
- Also at p.xi, "In the Committee's view, if real economic hardship and social dislocation, flowing from NCP reforms deemed desirable, is to be minimised or avoided, then consideration should be given to the Governments and agencies concerned becoming involved in developing adjustment packages and transitional plans consistent with the outcomes sought."
- At p.xii, "the 'public interest' test would appear to be being applied differently between jurisdictions and in an uncoordinated way across sectors."

In other developments, the NCP Council has recommended to the Federal Treasurer that all CTP and workers' compensation schemes be the subject of a national review by the Productivity Commissioner. The Treasurer has not responded, but the Victorian Government has said it will support the review.


10. International Developments

In South Africa, the newly formed S.A.A.P.I.L has sought APLA's critical evaluation of a proposed new TAC style compensation scheme. South Africa lost common law in Workers' Compensation some time ago. Peter Burt gave expert evidence to the Satchwell Commission, and is thus APLA's first member called upon to advise an international forum.

11. The Next Six Months...

The reduction of the national lobbying and media budget presented State Branches with a great challenge to increase their productivity so APLA could continue to develop our agenda. It is with great satisfaction that I can report that the Branches have done so, with APLA now participating in more ongoing lobbying projects than ever before.

Workers' Compensation schemes look set to be the hottest topic for the next six months, although the development of any tort reform package in the Medical Negligence jurisdiction would signal a fundamental paradigm shift.

Our priority will be to continue the 'leveraging' programs, and assess their affect, although as I have noted, these programs already appear to have been successful. 

For your consideration,

