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Medical negligence and tort reform in NSW

In mid February the *Sydney Morning Herald* reported that the NSW Government was about to introduce "a package designed to defuse the perceived crisis in medical indemnity insurance", and that the package was likely to involve tort law reform. The perceived crisis was the escalation in indemnity premiums as a result of United Medical Protection's additional call on members and the threatened withdrawal of public services by obstetricians across NSW.

On 27 February, 2001 the government announced its "reform package" which it intends to introduce in the current session of Parliament. The package looks at enhancing clinical quality to reduce errors, better protect patients and reduce claims; regulating medical insurance in NSW to eliminate 'cherry picking'; and tort reform.

While APLA supports certain proposals (compulsory professional indemnity insurance; greater financial accountability of MDO's; procedural reforms; risk management programs and changes to tax laws to facilitate structured settlements), our concerns relate to certain aspects of the so-called tort reform elements of the package: increasing the discount rate for damages from 3% to 5%; capping future loss of earnings to a weekly maximum of about $2,600 per week; capping general damages for most serious cases at about $350,000; abolishing exemplary and punitive damages and legislating to protect "good samaritans".

APLA has focused its resources since mid-February on a campaign opposing those proposals which will have the most adverse impact upon seriously-injured plaintiffs. APLA has met with members of the cross bench, the Opposition, the Attorney-General and Health Minister to raise our concerns. We will continue lobbying parliamentarians as the legislative package becomes clearer.

The Government has established a Reference Group of relevant stakeholders to examine the reform package and oversee the drafting of the legislation, and APLA has secured representation on that group.

The campaign has also sought to highlight some of the less well-publicised facts. These include the culture of MDO's rejecting reasonable settlement offers; the fact that a significant proportion of legal costs paid by MDO's go to defence teams and witnesses; the fact that the pool of costs includes amounts spent on coronial enquiries, disciplinary proceedings, and other services; and what we believe to be the reasons for the insurance crisis (lack of accountability by and regulation of MDO's, historically low premiums, questionable accounting practices, increasing claims velocity, etc). We are also putting forward reform proposals of our own.

A media consultant is assisting with a media campaign and a fundraising strategy has been implemented to fund this. We are networking with consumer groups and individuals concerned about this issue, including the Public Interest Advocacy Centre. We have collected case studies to illustrate how the proposals will affect injured plaintiffs, and have obtained the support of injured patients or their families who are willing to speak with the media. These cases can demonstrate how reasonable settlement offers were rejected by UMP; the extent of the ongoing care needs for seriously disabled plaintiffs; the reasons why people sue doctors and the type of conduct that will attract exemplary damages.

This issue is critical to other States and Territories as well, as it has become apparent that the AMA and the MDO's have commenced discussions with other State governments. The Australian Health Ministers Advisory Council is also currently looking into reform proposals for all States. APLA needs to do the same immediately. The National office is advising and resourcing all States in relation to this issue, and will be preparing a briefing paper to assist the campaigns in other States. PL

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