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Hot topics in plaintiff law



Eva Scheerlinck is the APLA Public Affairs Manager. PO Box 2348 Strawberry Hills NSW 2012 **PHONE** 02 9698 1700 **FAX** 02 9698 1744 **EMAIL** escheerlinck@apla.com

Footnote:

¹ [2001] HCA 29 (31 May 2001).

EVA SCHEERLINCK
PUBLIC AFFAIRS MANAGER
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As the new National Public Affairs Manager I hope to co-ordinate two pressing and vital national campaigns. Medical negligence and public liability law reform are hot topics of concern to plaintiff lawyers and their clients.

With the introduction of the *Health Care Liability Act* in New South Wales, there is interest in other states and territories to similarly cap damages in relation to health care claims. This is of great concern. It is important that members are aware of APLA's position opposing the capping of common law damages and the affect that has on injured patients. Before reforms occur nationally, members must be prepared to lobby against changes restricting the rights of plaintiffs.

The changes which were recently introduced in New South Wales will significantly reduce the compensation available to victims of medical negligence in that State. The article by Bill Madden on page 30 outlines the various provisions.

The High Court decisions in *Brodie v Singleton Shire Council* and *Ghantous v Hawkesbury City Council*¹ have stirred talks of legislating in the public liability area and possibly capping damages. The High Court decisions have abolished the nonfeasance rule and clarified the law in relation to negligence. Public authorities around the country are currently voicing their concerns about their increased liability as a result of these decisions. APLA believes that the abolition of the nonfeasance rule will result in early settlement of claims, therefore reducing the costs of litigating previously uncertain claims. Plaintiff lawyers should be nerv-

ous with public authorities already pushing a litigation crisis angle putting pressure on governments to act.

Anyone interested in lending their support to the medical negligence or public liability campaigns should contact me directly. Any developments in these areas in your state or territory should also be passed on to me as soon as possible, so that action can be taken immediately to avoid a further loss of unfettered common law rights.

An article on the GST consequences of court orders and out-of-court settlements is expected to feature in the next issue of Plaintiff. This is still an area of confusion for many plaintiff lawyers.

Meanwhile, APLA continues to investigate the proposed business tax law reforms in relation to the Tax Value Method. The impact of TVM on plaintiff lawyers' practices is a matter of great concern and APLA has requested that the Board of Taxation provide us with assurances that the impact of the proposed reforms on non-billable work in progress be seriously considered and that we be consulted in the development of this area of tax reform.

APLA has also contributed to the development of a Structured Settlement model, which is to be considered by Senator Rod Kemp and the Treasury Department. The government is currently considering giving structured settlements a tax-exempt status, so that structured settlements become a viable option for plaintiffs settling claims.

I invite all members to advise me of emerging issues in their area which may be of concern to APLA. The more time APLA has to prepare submissions, the more effective APLA can be. **PL**