

Testing times breed innovation

By Eva Scheerlinck



Our Public Affairs Team has been busy. Late last year we worked closely with the WA Branch on changes to that state's limitations and workers' compensation legislation.

This year we have filed submissions to the review of costs in the NSW Dust Diseases Tribunal and reforms to the Commonwealth Administrative Appeals Tribunal.

We are also involved in a review of personal injury compensation reforms by the NSW Legislative Council and a review of expert witnesses in civil litigation by the NSW Law Reform Commission.

A barrister member is considering the current review of the Uniform Evidence Code, and we will also be participating in a summit called by the Victorian Minister for Finance on that state's tort law reform.

An important part of our work at the Lawyers Alliance is facilitating participation by our members in these formal review processes. It's part of the day-to-day work that we do to give our members and their clients a voice. We've been doing it consistently for many years and will continue to maintain the Alliance as a credible stakeholder with an important contribution to make.

However, defending the rights of individuals at a policy level is no more important than the work that our members do every day, representing people in courts, tribunals and

settlement negotiations all over the country. Both in practice and in policy, times are tough.

As QCs Tom Percy and Julian Burnside told us at our national conference last year, the erosion of the common law that personal injury lawyers tackle on a daily basis is also confronting criminal and immigration lawyers.

Caps and thresholds on civil damages, indefinite immigration detention for stateless people and for convicted criminals, and the shrinking ambit of 'allowable matters' in industrial disputes all speak of a justice system under siege.

But despite the bad news, there are from time to time sparks of creativity in the use and interpretation of the law that I find both heartening and inspirational.

For example, Rebecca Gilsenan, a senior associate at Maurice Blackburn Cashman and a long-time Lawyers Alliance member, is running a case against the Commonwealth and Australasian Correctional Management (ACM).

The case seeks damages for psychiatric harm suffered by a child held in detention. The case potentially raises an interesting question. International human rights conventions have no force in domestic law unless specific enabling legislation has been passed. But does the fact that the Australian government has signed a human rights declaration influence the standard of 'reasonableness' in the

common law with respect to an action in negligence?

Solicitor Stephen Hopper is reported to be considering a civil damages claim on behalf of the recently released Mamdouh Habib. It seems likely that the claim will also turn on an interpretation of international law.

Personal injury claims based in international human rights law may seem a far cry from the daily work of most members. Indeed they are. But these examples illustrate the ways in which a more creative interpretation can forge an effective alternate route that enables lawyers to help their clients gain access to justice.

If either the case against ACM or Mr Habib's claim is successful, they won't necessarily change the rules that allow permanent immigration detention or military detention without charge. But such successes will pave the way for victims to confront their persecutors, hold them to account and force a forensic examination of the circumstances.

The Australian Lawyers Alliance exists to bring together and represent lawyers who care about people whose rights have been infringed – whether those abuses concern medical negligence or illegal detention.

Never has an organisation such as ours been more necessary. ■

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