

# APLA campaign to protect victims' rights in Victoria

Lee Carmody, Protect Victims' Rights Campaign Co-ordinator, Melbourne

In Victoria in recent years, a series of amendments to the *Accident Compensation Act* and the *Transport Accident Act* have had the effect of dramatically reducing the entitlements of injured Victorians to fair and just compensation. Amendments effective from 14 November 1996 which excluded reliance upon secondary psychological conditions to gain access to common law damages or long term weekly payments, dramatically reduced the number of claimants. The effect of those amendments has not yet had time to be sensibly assessed. The Minister responsible for WorkCover, Mr Roger Hallam, again initiated review of the Act earlier this year. The terms of reference to the WorkCover Advisory Committee "specified the outcomes ... for legislative change:

- to keep the system operating at 1.8% of payroll, on a sustainable basis, thereby maintaining Victoria's competitive advantage;
- reform should be broadly cost neutral and should not affect the overall level of benefits;
- that change should achieve significant efficiency gains to be channelled back into scheme-wide improvements."

The Committee was required to look at weekly benefits, statutory non-economic loss, common law, medical certification, dispute resolution and workplace safety. APLA Victoria commenced a campaign to protect victims' rights in order to promote public awareness and informed debate in the community. APLA Victoria, The Law Institute, the Victorian Bar and the Victorian Trades Hall Council amongst others put in submissions to the Minister. Requests for an opportunity to meet with and discuss the issues with the Minister were all denied.

In May, I was appointed to act as co-ordinator for the duration of the campaign. A briefing paper was prepared,

copies of which are available from APLA. Plaintiff lawyers throughout Victoria were identified, and information about the review was forwarded to them. Television, radio and print media advertisements were prepared. Country firms of solicitors undertook to sponsor advertising in six different regions. Plaintiff firms forwarded information to their clients.

The Injured Persons Association (IPA), which has operated in New South Wales since 1993 as a lobby group, working in the interests of injured persons, has established an office in Victoria with the support of APLA. The Convenor is Stephen Woodward, a health scientist with a background in asbestos and tobacco related issues. The IPA office is at Level 1, 52 LaTrobe Street, Melbourne Vic 3000, phone 03 9663 8832, fax 03 9663 6854.

The IPA produced a brochure which was distributed through legal offices, hospitals, unions, community legal centres and numerous other outlets. The main message was to raise awareness of the issues and to urge contact with local members of parliament to convey the community's expectations of adequate and fair assistance to injured persons. The brochure contained a reply-paid return slip to IPA, registering objection to further changes, seeking further information and requesting updated information on local MP's pre election policies.

The nearly 20,000 returns have been entered into a database, which allows sorting by electorate, enabling newsletters to supporters be locally relevant. Eighteen marginal seats were identified throughout Victoria and the brochures were letterboxed in those regions. In Warrnambool a group of enthusiastic supporters ensured very wide distribution.

A number of public meetings have been held. The IPA has invited members of parliament to meet with a representative group of IPA supporters from their con-

stituency. A dozen or so have responded and four have accepted although no meetings have been held to date.

In August 1997 in a media release, Minister Hallam said he was "disgusted by a workers compensation scare campaign" and "workers compensation lawyers ... were behind a campaign of deliberately distorting the facts behind a review the government was currently undertaking" and he was disturbed that "there is a great deal of unnecessary concern being caused to injured workers ... by groups ...orchestrating this scare campaign". He was "dismayed at the anxiety and concern which is being manufactured, when the whole point of the review is aimed directly at improving the system". The Minister and the government refused to answer direct queries for information about the proposals. Direct requests to the Minister from the Law Institute of Victoria for an independent review of attribution of costs to various elements of the scheme were ignored. APLA ran an advertisement in the print media headed *Come Clean Minister* which elicited no response at all.

On 7 October 1997, the Minister announced the proposed changes, justified by claims that they would enable "major cost containment to WorkCover while keeping injured workers benefits intact while dramatically reducing legal costs". Thus, common law rights for workplace-injured persons in Victoria is to be abolished. Weekly benefits will be reduced after 13 weeks (currently 26 weeks) with a cap of \$850 p.w. instead of current cap of \$680. Maximum payment for 80% and over permanent impairment will receive, pro rata, \$300,000 instead of the current common law maximum of \$1.1 million. Premiums have been raised to 1.9% of the payroll expanded to include superannuation. The proposals claim to "increase weekly benefits for the majority of injured workers".

A quick examination of a number of the most common injuries, ie, loss of thumb or forefinger consistently show a 15-20% reduction in compensation.

The most seriously injured will be most disadvantaged under WorkCover and people who had been working for the basic wage or amounts near to it, who are seriously injured will be confined to poverty for the rest of their lives. Under the current scheme, a seriously injured worker could expect a maximum payout of \$341,640 for pain and suffering and up to \$757,930 for loss of earnings. If only the loss of earnings component was invested at 6% this would produce an annual income of \$45,476.

Under the proposed changes, the lump sum for pain and suffering will be reduced by \$41,640 to \$300,000 and instead of a lump sum for economic loss,

injured workers will receive weekly payments of 75% of their pre-injury average base rate weekly earnings.

Someone earning \$1,133 per week pre-injury would receive \$850 per week post-injury, or \$44,192 per annum, slightly worse off than under the current system.

Someone earning \$867 per week pre-injury would receive \$650 per week post-injury, or \$33,800 per annum, substantially less than the investment return of \$45,476.

Someone on the basic wage of \$340 per week could expect about \$250 per week post-injury, or \$13,000 per annum.

Notwithstanding the Minister's stated intention "to improve WorkCover for the benefit of Victorian workers and employers", the result of the proposed changes is a higher premium and demonstrably lower payouts to injured workers. By selectively removing common law from WorkCover,

a discrepancy is created to the rights of injured persons whilst removing a significant curb on the behaviour of negligent employers. Under the guise of economic rationalism, the changes amount to an abuse of the very premise of the purpose of compensation schemes, which is to provide fair and adequate assistance to those temporarily or permanently in need of it.

Anyone who has read the HWCA's final report will realise that this programme of reducing benefits for injured persons is likely to spread around Australia. It is hoped that future campaigns can benefit from this campaign history. Do not hesitate to contact APLA Victoria for further information. ■

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# When labelling of gas bottles can kill

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Recently a mother and her twelve-week old baby were nearly killed due to escaping liquid LPG gas exploding in their home. This occurred because the wrong type of bottle was connected to the house gas supply. The mother received severe burns as a result of the explosion.

## Why did this explosion happen?

For LPG used in domestic cooking and heating, there is an expectation that gas is supplied (not liquid), either through a mains gas supply or via a bottled supply. In the case above, the LPG gas connected to the house was not in the correct gaseous form. The identity of the contents had been mistaken.

A large number of gases are distributed in steel bottles. Some of these gases, when under pressure, exist in a liquid form at room temperature, such as carbon dioxide, fumigant gases, pest control

gases, refrigerants and LPG. The reticulation equipment for LPG depends on whether gas or liquid withdrawal bottles are used. If liquid is supplied to a gas reticulation system, then this liquid will destroy or damage the pressure regulator allowing high pressure LPG liquid into the reticulation system. This can result in an explosion due to the failure of the reticulation system designed for low pressure gas, allowing high pressure LPG to escape. If this gas ignites, the resultant explosion can seriously injure and possibly kill people in the path of the explosion.

The only difference between liquid withdrawal bottles and gas withdrawal bottles in the case of LPG is the painting on the outside of the bottle and the inclusion of an eductor tube internally within the bottle for liquid withdrawal. The eductor tube is not visible from outside the cylinder. There is no difference in the valve fit-

tings on the LPG liquid withdrawal and the vapour withdrawal bottles. (In the USA, the liquid withdrawal bottle has a different thread than the gas withdrawal bottle.)

Thus, the only external difference between the liquid withdrawal bottle and gas withdrawal is the painting of the bottle. In the case of LPG, the top of the bottle is painted blue and the words "Liquid Withdrawal Only" are painted in blue. Lack of attention to detail to minor signage on such bottles undoubtedly leads to accidents and injuries. ■

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