

APLA Queensland report

Rob Davis, Coolangatta

Last week APLA Queensland held its final function for the 1997 year at the Heritage Hotel in Brisbane. The main attraction was Peter Gordon from Slater & Gordon who discussed a number of interesting subjects ranging from the current Victorian campaign for retention of common law, the importance of being a plaintiff lawyer, and the degree to which individuals rights are under threat in Australia from the ignorant and uncaring efforts of short sighted politicians. Regrettably the event was not taped so, in this instance, we cannot provide a copy of this interesting speech to our regional members.

Many Queensland members will be aware that the Queensland Attorney General recently released a 'consultation' draft of the proposed Uniform Civil Procedure Rules. These rules, which have been in the making for nearly a decade, will likely be implemented early in 1997 (if the Attorney General has his way). While all plaintiff lawyers would agree that the existing rules are outdated and confusing, most will be concerned at the shortness of the 'consultation' period, given that the time for submissions closed only 1 month after the consultation draft was issued. Those who have read the Consultation Draft will have noticed a number of troubling features such as:

- the absence of any class action provisions;
- a serious interference with legal professional privilege (that will make medical malpractice actions impossible in Queensland by requiring every discussion with an expert witness to be disclosed to the opponents);
- a definite pro defendant bias in the case management provisions which subject plaintiffs to the risk of strike out for delay without subjecting defendants to any similar sanctions (and we all know where the delay in readiness for trial usually lies);

- antiquated and rigid pro defendant provisions which unnecessarily and arbitrarily limit the district where a plaintiff may commence proceedings (and subject a plaintiff to strike out if the wrong district is chosen).

Notwithstanding the shortness of time APLA Queensland was able to prepare and deliver detailed submissions on those provisions of the Consultation Draft which are clearly defective or badly thought out. We can only hope that the Attorney General and the Justice Department heed our advice. On balance, and if the offending provisions are modified as we propose, then I believe the Uniform Civil Procedure Rules will be a positive advancement on our present rules of court.

The Queensland Law Society's Personal Injury Specialist Accreditation Committee has held its first meeting and is presently resolving the curriculum for the first round of applicants. While it is difficult to be certain, it looks as if the scheme will be ready to examine the first batch of applicants in mid 1998. I encourage all Queensland APLA members who meet the threshold requirements to participate in the scheme as specialisation is something that APLA has pushed for some time. While long time practitioners all face apprehension at the prospect of studying for exams, I firmly believe that specialisation, coupled with APLA membership and the soon to be implemented 'APLA Firm Merchandising' scheme, will offer plaintiff lawyers a clear way to differentiate themselves in the market place.

The APLA School Bus Safety Campaign is growing and beginning to pay fruit. Earlier this year I decided to shift focus from political lobbying for improved safety (which has not produced significant results after a decade of effort) to using the threat of common law actions to encourage meaningful changes in the attitude of consumers (schools, P & C's etc) and bus operators. Since the campaign was refocussed we have

seen immediate success. A number of schools have now decided that they will not engage buses which are not fitted with seat belts and one major Australian bus company has advised they intend to fit seat belts to all their fleet before the end of 1998. I am aware that numerous other operators are also installing seat belts. I shall report again on our progress early next year.

Most members will be aware that the Qld Workers Compensation Board has experienced a 'massive' improvement in its financial position and that the threat of further attempts to restrict common law in that area have waned slightly. The improvement is due to a number of factors such as improved earnings on the fund, increased premiums, better risk management, less pessimistic actuarial projections, and the serious limitations on common law imposed by the Goss Government's amendments. Two things are pretty clear at this point:

- The outlook is better than the government is letting on; and The trend towards improvement appears to be accelerating; and
- No significant part of the existing improvement is attributable to the Borbridge government's amendments to the Workers Compensation Act.

Naturally, none of this is new to us. We predicted precisely this outcome would result from the Goss Government's amendments. Indeed, we maintained then that even those amendments were unnecessarily harsh. With an election due early next year we all need to accelerate the pressure on all parties to commit themselves to abandoning the Borbridge Amendments and restoring the law, at least, to the level imposed by the Goss amendments.

Have a merry Christmas and a happy New Year. ■

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