

- Shock lasting over 28 weeks but not permanent: \$18,000
- Permanent symptoms and disability: \$48,000

### Who can apply?

Compensation may be payable to a primary victim, a secondary victim or a family victim.

A secondary victim is someone who witnesses an act of violence or who subsequently becomes aware of an act of violence but only if that person is the parent or guardian of a minor victim.

A family victim is a member of the immediate family of a primary victim who has died.

### Financial loss

In addition to the compensation amounts referred to above, compensation may be made for financial loss such as actual expenses, past loss of

earnings and loss of personal effects to a maximum of \$10,000.

Compensation is no longer payable for future loss of earnings or for future medical expenses. (Applications for the cost of counselling are independent of applications for compensation and can be made for an indefinite period).

Past loss of earnings are now to be calculated in accordance with the *Workers Compensation Act 1987*, which will result in lower amounts of compensation for loss of earnings.

### Appeals

Determinations are made at first instance by assessors at the Tribunal.

An appeal can be made from a determination of an assessor to the Tribunal, however there is no longer a right of appeal to the District Court, except on questions of law.

### Costs

Although costs are still to be calculated according to the scale of costs prescribed by the compensation rules, the Tribunal can now award an amount of costs which exceeds the scale if special circumstances warrant such action.

Further, an assessor or the Tribunal can decline to make an order for costs or may reduce the amount of costs.

### Time limit

As before, an application should be lodged within two years of an act of violence although late applications may be accepted in some cases, particularly in cases involving sexual assault, child abuse or domestic violence.

*Rebecca O'Connell is a solicitor with Blessington Judd in Sydney.*

## Workers' compensation win for vaccine consumer

*J M v Hunter Area Health Service*

Trevor Carter, Carters Law Firm, Sydney

### Background

This firm reports on the first successful workers' compensation claim as a result of the administration of a vaccine, namely hepatitis 'B', to an employee employed in a health facility.

The Applicant was employed by the Mater Misericordiae Hospital at Newcastle as a registered nurse and also separately worked for the Community Aged and Mental Health Service (CANS) doing nursing and assisting patients at home supervising medications, showering and dressing.

In 1983, she had a hepatitis vaccine (old vaccine) when she was doing intensive care and neonatal nursing and recalls a flu-like illness after this. She had her first recombinant DNA vaccine, hepatitis 'B' in 1991 and had 2 injections but did not complete her course. She did feel aches and pains after this injection which lasted for several months. It eventually settled. On 18 August 1994, she began a totally new course of hepatitis 'B' vaccine with the recombinant DNA once again. Four days after this injection she developed her first episode of arthritis.

There had been no extra-articular manifestations of rheumatic disease nor any preceding infection. There was no family history of arthritis.

Medical reports concluded –

*'On balance I think it is reasonable to conclude that the hepatitis 'B' vaccine given to Mrs. M. four days prior to the onset of her arthritis is responsible for her arthritis. The time relationship between the vaccination and the*

*onset of her arthritis cannot be questioned. Interference with the immune system in a non-specific way, such as by vaccination, may precipitate ongoing immunologically mediated inflammation in the form of arthritis. The case reports of arthritis following hepatitis 'B' vaccination serve to highlight this association.'*

At a hearing in the Newcastle Workers' Compensation Court a medical panel was requested by the GIO. This panel assessed the percentage loss of the efficient use of the applicant's right arm at or above the elbow at 35%, \$36,512.00; left arm at or above the elbow 35%, \$34,230.00; right leg at or above the knee at 35%, \$34,230.00; left leg at or above the knee at 35%, \$34,230.00 and 10% permanent impairment of the neck, \$5,216.00.

### Damages

In a subsequent hearing at Parramatta Workers' Compensation Court, lump sum compensation under Section 67 was apportioned as to \$21,750.00 in respect of past pain and suffering and as to \$21,750.00 in respect of future pain and suffering. The applicant remains on continuing weekly payments of workers' compensation.

This firm is indebted to the Australian Council for Immunisation Inc. who provided additional medical evidence from medical journals on cases of reactive arthritis after hepatitis 'B' vaccination.

*Trevor Carter is the principal solicitor of Carters Law Firm, Kensington, NSW, and an APLA member.*