

# APLA NSW report

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## District Court Transfer

Despite wholesale opposition to the transfer of personal injury actions from Supreme to District Courts (see the last edition of *Plaintiff*, Issue 21, June 1997, where APLA NSW Branch's position to the Attorney was reproduced), the District Court Amendment Act took effect on Friday 18 July.

Although still very early days, indications are that we are in for chaotic times ahead. Lawyers acting in cases already before the Supreme Court are receiving letters from the Court encouraging a transfer by consent. I have had reports that those opposing a transfer on the basis of complexity or quantum exceeding \$750,000 have been met with a certain degree of hostility from the Supreme Court Registrars who have indicated that cases remaining can "expect to languish". We can anticipate escalating difficulties as more cases are moved over proving that the District Court is hopelessly ill-equipped to deal with the onslaught of new work.

Three days after the amending legislation took effect, Judge Garling (District Court List Judge) addressed a packed room of lawyers at an APLA briefing session at the Law Society. A panel including Patrick Fair, President of the Law Society, Belinda Cassidy, who represents insurers in personal injury actions, and Andrew Morrison SC were present to field questions. APLA is not at one with the Judge and his views that the Court has the capacity to deal with the transfer. We are therefore working with the Law Society and the Civil Justice Research Centre, engaged by the Society, to monitor the operation of the transfer.

Could members please keep me or NSW Committee members aware of your own experiences of the new regime so that these may be taken into account in the monitoring process.

## Tobacco litigation

Following one of our breakfast meetings on the subject of tobacco litigation in July at which Neil Francey, Barrister, and Anne Jones of Action on Smoking

and Health spoke, a press release was issued calling on the Government to reverse its decision not to provide funding for a class action involving a potential 500,000 smokers under 21. The issue was picked up around the country and the article written by The Australian's Legal Reporter Janet Fife-Yeomans is reproduced elsewhere in this issue of *Plaintiff*.

Practitioners interested in becoming involved in this area of work should contact Roland Everingham at Cashman & Partners and keep an eye out for a meeting to review progress in the matters raised in the press campaign to be convened shortly.

## Stolen children litigation

In NSW, there are a number of test cases being conducted by firms who participate in the Public Interest Law Clearing House (or "PILCH"). The APLA Secretariat has had a steady trickle of queries from individuals wanting to be put in contact with solicitors willing to act following the press release issued in the early days after the HREOC report was released. If you believe that you are appropriately qualified to act in this sensitive area, please contact Tanya Simpson at APLA.

## Regional seminar programme

Membership continues to rise in NSW and particularly in country areas where the regional programme is being targeted. The most recent seminar was held in rural Camden and attracted lawyers from Campbelltown, Wollongong and the southern suburbs of Sydney.

Members can obtain access to the papers from the NSW regional programme for a charge of \$40. The papers are a very useful and up-to-date resource and include the following:

## Dust diseases jurisdiction

- presented by Anna Katzmann, Barrister

- What is a dust disease?
- Claims under the Workers Compensation (Dust Disease) Act
- Common law claims in the tribunal

## Product Liability

- presented by Dr Peter Cashman, Cashman & Partners

- Using Section 75AJ and the 30 day rule
- Suppliers' response to demands
- Assessment of damages
- The class action experience

## Medical negligence litigation

- presented by Stephen Walmsley, Barrister

- 'Defensive medicine' or just good practice?
- The evolving standard of care
- Overview of recent significant cases

## Premises liability

- presented by Michael Eagle

- The duty of care
- Preparation
- Causation
- Denial of Occupation - tenants & sub-tenants
- Signs, systems and supervision
- Experts
- Future developments

## Hot tips for workers'

compensation practitioners

- Rob Taylor, Barrister

- Learn how to work with the new Amendments
- Conciliation procedures under the

## Chemical litigation

- presented by Peter Long,

Peter Long & Co, Gunnedah

- Running a claim based in chemical contamination
- Overcoming causation difficulties

## Common law sexual abuse claims

- Phillip Taylor, Barrister

- Factual scenarios: the church, the classroom, the doctor/patient relationship
- Limitation Act defences
- Who to sue? Master & servant issues
- Resolving competing interests in confidentiality and the public interest

## Running catastrophic injury claims

- presented by Andrew Morrison SC

**Litigation at Sunrise seminars**

Since the last issue of *Plaintiff*, there have been two seminars. The first was on the topic of tobacco litigation (see above). On 7 August, the APLA Medical Negligence Special Interest Group presented a specialised session on laparoscopic surgery.

We heard from two experts in the field: Professor Michael Bennett who has a private obstetric practice at the Royal Hospital for Women in Sydney and also lectures in obstetrics and gynaecology at the University of Sydney. Professor Bennett also has a sizeable medico-legal practice and has often provided expert reports for plaintiffs. The second speaker was Stephen Walmsley, one of Sydney's leading medical negligence barristers. The session was very well received given its very practical orientation.

Papers, as usual, are available for a small charge from APLA.

**Launch of "Passive Smoking in the Workplace" WorkCover Authority of NSW and NSW Cancer Council**

NSW branch was invited to the launch of this publication on 24 June 1997 which is available from the WorkCover Authority (phone (02) 9370 5000) or from APLA.

**Launch of "Class action" supplement: PIAC**

APLA (NSW Branch) was also invited to the launch on 4 August of an updating publication prepared by the Public Interest Advocacy Centre for the Coalition of Class Actions. Entitled *Representative Proceedings: Supplement*, the publication provides a very useful and contemporary analysis of how class actions are developing in Australian courts and tribunals.

Given the activity (and recent publicity) in the area of tobacco litigation class actions, this publication is partic-

ularly timely as it is a succinct punchy guide to how to use the class action mechanism.

It is available from PIAC (phone (02) 9299 7833) at a cost of \$10.00.

**Coming up:**

- 4 September 1997: Litigation at Sunrise: Computer resources
  - 2 October 1997: Litigation at Sunrise: Environmental Health litigation including a presentation by Tim Robertson, Barrister
  - November 1997 (date TBA): Litigation at Sunrise: Commonwealth workers' compensation
  - 3 December 1997: AGM & Drinks (nomination forms for the Executive and Committee positions from Terry Stern, Branch Secretary, Stern & Tanner). Venue to be advised.
- See you at the conference in Coolum! ■

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# APLA WA report

**Sukhwant Singh, Friedman Lurie Singh, Perth**

APLA WA has not held another meeting since its last report. We have been focussing on the following:

Submissions to the Civil Reform Committee of the District Court chaired by his Honour Judge Blaxell which includes focussed proposals relating to Court procedures affecting personal injury claims and in particular motor vehicle accidents. The State Government Insurance Commission has made submissions and proposals for amendments. These amendments were discussed at the last APLA WA meeting in May 1997.

Arising from the meeting, submissions have been made to his Honour Judge Blaxell with a copy to the WA Law Society's Personal Injury Committee highlighting APLA's view of proposals

and making further proposals in relation to the submissions. A copy of the submissions can be obtained by contacting APLA WA President, Mr Sukhwant Singh, on (08) 9325 6133.

APLA WA has also been invited to discuss with the Registrars of the District Court proposals relating to refinements to the procedures relating to pre-trial conferences (where negotiations are undertaken in the District Court prior to matter being listed for trial in an attempt to conclude claims, including personal injury claims, however arising). Members are urged to contact Sukhwant Singh by or before 29 August 1997 with any suggestions relating to refinements and improvements in the system relating to pre-trial conferences.

Brochures for the APLA conference in Queensland have been distributed with a personal letter from the President (WA) urging them to attend the conference. Brochures have also been personally delivered to various APLA members and non-members urging attendance particularly in the light of the excellent programme and subjects covered at the conference. ■

**Sukhwant Singh** is a Partner at Friedman Lurie Singh, Perth, and is Western Australia branch President of APLA.