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# Abolition of common law rights in Victoria

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The Victorian Government has decided to abolish common law rights for workers in this state. Despite the rhetoric that the benefits for workers are now better, in doing so the government has in our view significantly eroded no-fault benefits as well.

APLA Victoria has been running a strong campaign against this decision, including TV, radio and press advertisements. Whilst our campaign may appear to have been unsuccessful given the government's decision, it is likely that without APLA's campaign and the efforts of the Law Institute and other groups as well, the legislation would have been retrospective to cases not issued by 1 September 1997, whereas at least we currently have a three year period of grace from the date of passage of the legislation during which we can pursue the current rights of our clients.

Rumours of the changes have in fact been floating around for some months, to the tune that common law was to go. APLA reacted to the rumours by organising a *Victim's Rights Committee* and hired Lee Carmody to be the campaign co-ordinator. As the APLA campaign gained momentum, the Minister responsible for WorkCover, the Hon Mr Hallam accused us of scare-mongering and repeatedly assured us that workers would not be worse off as a result of any changes. There were also many assurances from various members of government that common law rights were simply not under threat and not on the agenda.

In early October, there were strong rumours that Cabinet had proposed the abolition of common law rights and that the changes would be retrospective in that proceedings not issued by a certain date (largely unspecified) would be barred. Understandably, many APLA members reacted to this information and hundreds of writs were issued. This in turn was used as a justification for the abolition of the right to sue.

Indeed, lawyers' costs have been used as a significant factor in the abolition of common law rights. The Herald Sun published the alleged fees paid by the Victorian WorkCover Authority (VWA) to the "top 10" firms. No doubt these figures were leaked by the VWA to support their assertions that worker's rights should be abolished because "lawyers are paid too much". Someone should point out to the VWA that unlike their lawyers, we only get paid if we get a result for our client. If the VWA is spending too much on lawyer's fees, they should look at their decision making processes. If the right decisions were made by them in the first place, the amount of litigation would be significantly reduced.

Further, you have to consider the integrity of a government which misuses lawyer's fees as justification for disadvantaging workers. Do we close hospitals because doctors cost too much? If this society believes that injured workers should be

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WEDNESDAY, OCTOBER 8, 1997  
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## Victoria shakes up compo laws

Mark Davis

The Victorian Government yesterday unveiled a major change in the State's workers' compensation system which will abolish injured workers' rights to sue employers at common law while increasing annual compensation premiums paid by employers by more than \$100 million.

The changes announced by the Minister for Finance, Mr Roger Hallam, are designed to rein in cost pressures on WorkCover, the State's workers' compensation system, by cutting legal costs associated with common law claims and boosting premium income.

In other major changes to the compensation system, the Government will:

- Overhaul weekly compensation benefit payments for injured workers, cutting entitlements for workers with serious injuries or who are unable to return to work within 13 weeks, but boosting benefits for other workers.

- Impose a five-fold increase in penalties for negligent employers under occupational health and safety legislation, boosting maximum fines to \$50,000 for individuals and \$250,000 for companies.

- Remove appeal rights for workers who do not agree with assessments of their impairment levels by medical panels.

Mr Hallam said the changes would keep the overall level of workers' benefits intact while dramatically reducing legal costs and common law payments, which had increased from \$17.9 million in 1995-96 to \$139.7 million last financial year.

But the Government is certain to face a major public campaign

against the measures, which were yesterday condemned as "cruel and unfair" by the Law Institute of Victoria and as "arrogant, callous and heartless" by the State's Opposition Leader, Mr John Brumby.

The Victorian Trades Hall Council warned that unions would consider an industrial campaign over the issue.

But the Victorian Employers Chamber of Commerce and Industry welcomed the package as balancing the need to maintain benefits while controlling costs. VECCI's chief executive officer, Mr David Edwards, said he hoped the premium increase would be reviewed once the cost controls had come into effect.

The main change announced by Mr Hallam involves replacing access to common law damages for seriously injured workers whose employers are negligent with a new statutory system for awarding lump-sum payouts to workers with permanent impairments.

Under this new statutory system which will also replace the existing "table of maims" - injured workers will be eligible for lump sum benefits up to a maximum of \$300,000 for deaths and injuries involving massive impairments, with lower payments for lower levels of impairment.

Mr Hallam said workers injured before the new legislation came into effect would have a three-year sunset period to begin common law proceedings against negligent employers.

To cover the costs of claims made during this sunset period, the Government would increase insurance premiums despite earlier assurances they would not rise.

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protected, as it does, the onus is on the government to develop a system which is just, efficient and economical. The VWA bureaucracy has in the past two years increased by 16%. It is an organisation which is bloated, inefficient and costly. Not surprisingly however, there are no calls by them that savings are made within the Authority itself.

It really does appear that the VWA is either wilfully misleading the Minister, or he simply does not understand the detail of what he is proposing. By any stretch of the imagination, the changes cannot be said to be increasing benefits to workers.

To turn very briefly to the nature of the changes, even a superficial comparison of the schemes clearly shows that workers will be considerably worse off after the changes are implemented.

has not yet been tabled and we are hopeful that we can sway enough coalition members to change their minds, as they are already apparently feeling nervous about the extreme nature of the changes.

Thus the campaign continues. We really are currently fighting for our very existence and for our client's most basic rights. Without APLA, the Protect Victims' Rights campaign would not have been anywhere near as effective. Recent events have proven to all personal injuries lawyers that a strong and active APLA is our most powerful voice.

However, the campaign has cost money, and, to continue the fight, more money is needed. If you haven't yet contributed, ask yourself what these changes mean to your clients and ask yourself how much worse things would have been had

we are planning other activities. In particular, there will be a seminar on the new legislation once we have a bill, which we anticipate will be in November sometime. Also a large contingent of Victorians will be going to the APLA National Conference later this month. High on our agenda will be a workshop on common law rights and the rights of victims of injury. If Victoria is anything to go on, this is just the thin end of the wedge, with the potential for this sort of wholesale abolition of people's rights to spread to other states.

Keep up the good fight! ■

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A further report on APLA's campaign to protect victim's rights appears elsewhere in *Plaintiff*.

Current entitlements:	New entitlements:
Common law damages of up to approximately \$340,000.00 plus loss of income of up to approximately \$757,000.00.	No entitlement.
Table of maims:	
% of approximately \$105,000 plus pain and suffering of about \$56,500.00 after \$11,000.00	\$300,000.00 if 80% impaired (only paraplegics qualify) Up to \$175,000.00 if there is a 10% bodily impairment e.g. 25% hearing loss would not qualify
Weekly payments:	
70% or 90% after 2 years	70% or 75%

The new scheme therefore clearly disadvantages injured workers despite the Minister's assurances that workers would not be worse off as a result of any changes.

So, things are looking very bleak for workers in this state. Not surprisingly the government says it is all our fault. Having said that, we have not yet given up. A bill

the changes been retrospective. If you have contributed already, please consider what any softening of the government's position might mean and help us show the people of Victoria how devastating these changes actually are.

Finally, whilst APLA Victoria's efforts have been largely focussed on the campaign,



National President Peter Semmler QC (right) meets USA consumer advocate Ralph Nader at 1997 ATLA Convention