

What is the Justice Corporation?

*Interview with General Manager Peter Farthing
Simon McGregor, APLA Policy Manager*

The absence of civil legal aid in Australia has meant that lower and middle income citizens do not have an economically realistic opportunity to access the courts system.

The proof that large numbers of people with good cases are not able to get to court comes in the form of the newly created Justice Corporation.

A group of Sydney entrepreneurs and financiers, who are not bound by the ethical restrictions placed on lawyers regarding contingency fees, have seized the opportunity to selectively back litigation with good prospects of success in return for a percentage of any successful verdict.

Peter Farthing, General Manager of Justice Corporation Pty. Ltd., described their operations as follows:

1. Any person may seek a funding agreement with Justice Corporation by providing the Corporation with a complete account of the cause of action including all supporting documents. Justice Corporation undertakes to keep the application confidential. Responsibility for the effluxion of any relevant time limits rests solely on the applicant.
2. Justice Corporation obtains legal and associated expert opinion and assesses the financial risk or other difficulties involved in pursuing the claim.
3. Where the risk of losing the case is acceptably low, the Corporation will offer to fund the litigation, including adverse costs orders, in return for a percentage of the verdict. Farthing anticipates Justice Corporation will take between 10% to 30% of a verdict in litigation it funds, depending on the risk level. They will not support litigation with too high a risk level, as the associated funding agreement would require a plaintiff to hand over such a high portion of the successful verdict that the agreement might be declared invalid on public policy grounds.

4. The terms of the funding agreement will be set out in a contract, and prospective plaintiffs will be advised to seek independent legal advice regarding its terms. The contract is currently being settled by Counsel.

Farthing runs Justice Corporation in partnership with Sydney barrister Andrew Rayment and financier Rene Rivkin. Farthing has known for Rayment since they were in secondary school. They formulated and researched the idea together, and then approached Rivkin as he had a reputation for supporting non-conventional business projects.

Justice Corporation has not yet entered into any agreements to finance litigation, although Farthing says they have received over 400 applications to date without advertising as a result of the media coverage this controversial project has received.

Farthing says Justice Corporation does not expect to have major activities in the workers' compensation or motor accident fields, as many law firms already adequately provide for impecunious plaintiffs here. Farthing anticipates demand for Justice Corporation's services in higher

cost or lower volume areas such as medical negligence, product liability, public liability and defamation. He said they will also target commercial litigation as alternative fee arrangements in this area appears to be completely untapped.

Once an application is accepted, Justice Corporation will select the appropriate law firm to have the care and conduct of the matter. The firm will run the litigation, and Justice Corporation will guarantee their fees. Justice Corporation does not want to enter into permanent arrangements with any firms, but will try to select the best firm for particular types of cases. Farthing said that law firms that refer matters to Justice Corporation will be retained to provide the legal services in those matters if the Corporation decides to offer a funding agreement.

Farthing said, "Our proposal takes the financial pressure off lawyers and lets them do what they do best: win cases." Farthing acknowledges the scheme is ground-breaking, and will probably require a test case to determine the validity of the financial arrangements. Justice Corporation believes it will be able to ▶



Peter Farthing, General Manager of Justice Corporation (right) with Rene Rivkin, the company's financier.

operate in New South Wales, Victoria and South Australia as these jurisdictions have abolished the old torts of champerty and maintenance, leaving only public interest grounds as a justification for declaring the arrangements invalid.

On the topic of contingency fees, Farthing said, "I see sense in dividing the responsibilities for litigation between financiers and lawyers. It removes the potential for conflicts of interest."

"I also imagine there is concern insurance premiums might rise, but I don't think the impact of our corporation alone will be that big. We do however anticipate competition springing up soon. Other firms might not be as scrupulous in the

type of litigation they take on, and this may inflate premiums. It is a key concern of ours that only legitimate causes of action are run."

"We have also had informal discussions with the Legal Aid Commission of New South Wales, and will refer any matters which might qualify for Legal Aid to the Commission so that duplicate services are not offered."

"I think our project is a step forward for lawyers. It is creating additional work and allowing lawyers to concentrate on providing legal services."

APLA's President, Peter Carter, commented that access to justice should be a right, not a privilege.

"All governments should work to improve access, not reduce it," he said. "The tragedy here is that twelve months ago APLA proposed a similar program to the Senate Legal and Constitutional References Committee inquiry into the Australian Legal Aid System."

"We proposed a fund be set up by the Commonwealth, and money from successful cases be fed back into the fund for the benefit of future users and the community as a whole. Eventually the fund could grow large enough to support litigation of major social importance, such as tobacco class actions or the stolen generation cases. That opportunity has been missed." ■

APLA in the Media

Rebekah Kay, National Media Officer

As the new Media Officer for APLA I'm required not only to respond to inquiries from the media, but also (and predominantly) to try to get the media interested in our deeds, issues and concerns.

Recently we have issued Media Releases on a variety of topics, such as:

- Tobacco Company attempts to derail anti-smoking lobby (Philip Morris documents posted on the web)
- NSW Premier Carr's attempts to blame increases in Motor Vehicle third party premiums on lawyers, despite independent evidence to the contrary
- A mass "Letter to the Editor" campaign on behalf of the National & State Presidents defending lawyers against the federal Attorney-General's claims that lawyers were hampering justice reform

We've done interviews or provided journalists with research and leads on a number of other issues, including:

- Motor Accident Commission proposed changes in SA
- Department of Social Security changes

to the way non-economic loss awards are treated (see article p.45)

- GST on legal fees (see article p.45)
- Public Transport accidents
- Transport Accident Commission payout changes in Victoria
- Hospital list-rigging crises

A *Current Affair* aired a story on Justice Corporation, including an interview with Peter Carter, following an APLA media release regarding Justice Corporation's plan to run litigation on a contingency basis. That went to air on Monday 13 July.

My thanks go to the members who joined in the search for a person to talk to the media. I'm finding that journalists are receptive to APLA and what it represents. However, to make an issue appealing to journalists and their audiences, we need to be able to present the human face of it. To the media lawyers are just more talking heads in suits that are seen to have vested interests. But your clients, the ones personally affected by the problems we fight against, are the best people to "tell" the

story. And you, the members, are the best people to help me find them.

One of the difficulties I have when I manage to get journalists interested in an issue is finding someone in that particular predicament for the media to talk to. Members are at the coalface day in - day out. You meet the real people, hear their stories and share their pain.

I will often be on the phone casting around for a member who has an articulate client, such as a victim of a workplace injury, who is prepared to speak with the media. Alternatively, if you have a client that you think is a perfect example of a particular issue, who is able and prepared to talk about their situation, then I'd like to know about them. If it's a good story, the task of selling it to the media is far less difficult. Without a personal story, it's almost impossible. This is where I need your help.

Regards,

Rebekah



Rebekah Kay