



STATE BRANCH REPORTS



Northern Territory Branch

The Northern Territory continues to be the jurisdiction where the common law has sustained its greatest casualties. Not only have we long since lost access to the common law in the case of industrial injuries and motor vehicle accidents, but now it is proposed that interstate and international visitors to the Northern Territory suffer further restrictions on their right of access to the common law for injuries arising out of the use of motor vehicles.

It is interesting that all this has happened and is continuing to happen in the

Northern Territory where a conservative Government is in power. Chief Minister Dennis Burke has been quick to defend his policy of mandatory sentencing in terms of "victims' rights", but we hear little of victims and their rights when we come to debate the issue of access to the common law in this jurisdiction.

In addition to these long-standing issues, all citizens of the Northern Territory are suffering from restricted access to the Courts because of insufficient Judges and Magistrates. We have recently learned that the number of sit-

ting days which our Supreme Court will make available to hear civil actions has been slashed yet again and Northern Territory plaintiffs can now expect a delay in the hearing of their actions of up to 12 months from listing for hearing - three or four years ago, this period was more like four months.

The NT Branch of APLA is continuing to make submissions to the NT Government and to the NT Opposition concerning all these issues. As matters presently stand, we don't expect an early resolution of any of our concerns.

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NSW Branch

Catherine Henry resigned as Branch President in December 1999 after several years of sterling service. I took over as President from this time.

In February the Branch conducted seminars in Lismore, Coffs Harbour, Tamworth and Dubbo. They were well attended and much appreciated by participants. There was local radio and newspaper coverage.

The State Conference in March was a tremendous success. There was considerable media attention and the conference made a large profit.

NSW members have been heavily involved in lobbying activities and meetings in relation to the *Motor Accidents Compensation Act 1999*.

Meetings were held with representatives of the Motor Accidents Authority

and various medical groups in relation to the guidelines on evaluation of the degree of permanent impairment, for psychiatric injuries, claims for future economic loss etc.

Questions on the assessment of permanent impairment have been presented to the Law and Justice Committee of the Upper House which is conducting an inquiry into the matter.

Position papers were distributed to all State Liberal, National, Democrat, Green and Independent MPs. Meetings have been held with Attorney-General Jeff Shaw (now retired), Special Minister for State John Della Bosca (who was given carriage of this matter) and other NSW politicians. A number of media interviews have been given on the topic.

There have also been developments in the workers compensation area with new legislation expected. Our SIG has finalised a critical analysis of actuarial advice to government, position papers on key issues and a series of fact sheets for trade unionists.

SIG members have lobbied NSW

Opposition Leader Kerry Chikarovski, National Party Leader George Souris, Attorney-General Shaw, Special Minister for State Della Bosca, and independent, Green and Democrat MPs. Adjournment speeches and questions have also been prepared for MPs.

Other activities have included Litigation at Sunrise Seminars which have contributed to Branch fundraising, the making of a submission to the Parliamentary Committee conducting an inquiry into a possible Bill of Rights for NSW and the continued work in support of structured settlements.

Developments have been regularly reported in the *NSW Newsletters* prepared by Hannah Middleton.

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Queensland Branch

2000 is proving to be an extremely busy year for APLA Queensland.

For the first time in the Queensland Law Society's history a ticket was run by a group of candidates. This ticket was run by APLA Queensland. Of our four candidates, not only were three successfully elected, they received the highest number of votes of all candidates. Congratulations to Rob Davis, Glenn Ferguson and David O'Brien on their election. Commiserations to Michal Horvath who missed out on election by one place. The successful candidates will have a challenging two years ahead to advance APLA's aims and to ensure that APLA's views are effectively communicated to Queensland's peak lawyer body.

APLA Queensland also continues to forge ahead with its efforts to reform the WorkCover legislation. APLA has developed a close working relationship with WorkCover's legal services department and hopes to meet shortly with senior WorkCover management with a view to a full-scale review of the legislation with all major stakeholders. There is certainly

a long way to go in this direction and in the meantime injured Queensland workers continue to have their rights eroded, and in some cases extinguished, by draconian "tripwire" legisla-

tion and over-enthusiastic WorkCover panel solicitors.

APLA Queensland held a WorkCover Intensive on 19 August which was attended by over 130 delegates and received a highly enthusiastic response from not only APLA members but many defendant solicitors who also attended. APLA is extremely grateful to the efforts of Gerry Mullins who arranged for a CD to be prepared for APLA members containing all relevant decisions of the District and Supreme Courts and the Court of Appeal relating to WorkCover. The CD is already proving an invaluable tool for practitioners in this area. APLA's thanks also to Darren Moore for his outstanding efforts in organising the Intensive.

APLA Queensland will also be holding a delegate-participatory motor vehicle insurance intensive on 30 September. This is on the eve of the amendments to the *Motor Accident Insurance Act* which see restrictions imposed for the first time on injured persons in relation to recovery of dam-

ages and legal costs. The Motor Accident Insurance Commissioner will be delivering the keynote address. The Deputy Commissioner and Nominal Defendant, in addition to a number of high profile plaintiff and defendant lawyers, will also be addressing the seminar.

The practice of lawyer touting following motor vehicle accidents continues and APLA Queensland will be working closely with the Motor Accident Insurance Commission and the Queensland Government to investigate all complaints relating to lawyer touting, either directly or indirectly, to put an end to the practice. Queensland practitioners are reminded that breach of the Act relating to touting is deemed an act of professional misconduct and renders a practitioner liable to be struck off.

On a happier note, APLA Queensland looks forward to welcoming everyone to the National Conference in October. We can guarantee you perfect weather and great hospitality.

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ACT Branch

The ACT branch of APLA has been very active over the past 12 months.

We have continued to work on many issues of local significance. For instance, changes to the Criminal Injuries Compensation legislation were actively resisted by APLA. That resistance culminated in a Parliamentary Committee Report which adopted many of the submissions put to it by APLA. While the short-term political result was very disappointing, we are supporting a

Private Member's Bill which would overturn retrospectivity provisions. One local APLA member currently has carriage of an Appeal which challenges many of the legislative changes. APLA continues to lobby politicians directly in addition to focusing media coverage on this issue.

Local members have participated in reform to the Rules and Procedures of the Supreme Court and have given evidence at various local and federal Parliamentary Committees.

The common law continues to be the basis of motor vehicle compensation within the ACT. APLA has been active in liaising with the ACT Law Society and the sole CTP insurer for the ACT with a view to maintaining the common law. The branch accepts that the interests of both plaintiffs and the insurer need to be recognised such that the system can be maintained in its current form.

Although we have a small base, membership has been increasing steadily. APLA's profile has been raised by CLE seminars and a variety of social gatherings. We arranged for Justice Kirby to address a dinner attended by APLA's National Council in March this year.

Injured workers still have the benefit of the common law in the ACT. Many members have been very diligent in providing guidance to the politicians – in the face of a large amount of disinformation circulated by the insurers. This issue will keep us all very busy in the months ahead.

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South Australian Branch

Motor Vehicle Claims

Over the past year there has been extremely good communication between the Motor Accident Commission and APLA. There are legislative changes that the Motor Accident Commission is currently contemplating which are under consideration by both APLA and the South Australian Law Society.

We are at present waiting for the proposed draft amendments to be sent to us so that they can be open to discussion with APLA members in South Australia. The proposed amendments do not impact on the entitlements to damages of motor vehicle accident victims but are mainly in regard to recovery to be sought by motorists engaging in behaviour that

is inherently dangerous (i.e. using hand-held telephones whilst driving or consuming amphetamines to enable them to drive distances which are unduly prolonged.)

WorkCover

Since January 2000, changes in rules of governing costs recoveries and subsequent procedural amendments have placed workers under pressure to accept lower settlements as the risks of proceeding to a Judicial Determination in the South Australian Workers Compensation Tribunal have increased. Rules now effectively limit the amount of court time allowable and the counsel fees that a worker can expect to recover. Workers' evidence-in-chief is now required to be adduced by way of a written statement tendered prior to a hearing. The first oral evidence being given

by a worker is under cross-examination. The burden is greater in stress claims and "Film" cases. The rationale is to reduce delays in the Court list.

APLA representatives have made submissions through the Law Society of South Australia, which has some access to the Tribunal, and a dialogue process is being developed to address areas of concern. We have also been monitoring GST-related issues in WorkCover matters and informally sharing our suggestions on how to handle issues as they arise. A seminar will be organised to address these issues for APLA representatives in the near future.

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APLA (WA) has remained focused in trying to get the best out of the new workers' compensation laws which came into effect in WA on 5 October 1999. The objective is to ensure that, if we are stuck with the system, we get it to work as best as we can for the benefit of the injured worker.

Meetings have been held with the relevant Minister, the Chief Executive Officer of WorkCover and the Director of the Conciliation & Review Directorate of WorkCover to try and improve procedures and implement expedited settlement initiatives at WorkCover. If it is the case that the new laws are intended to resolve disputes rather than prolong litigations, then we have focused on appropriate recommendations to WorkCover to implement structured negotiations.

At this stage, there are no structured mediation or negotiation procedures and we have provided submissions to WorkCover and the Minister suggesting that within the existing legislative framework, such produced procedures can be implemented.

The ongoing concern remains that many applications for determination of a worker's relevant level of disability (which will determine whether or not the worker has access to common law) are still locked in battle at WorkCover. It was initially thought that as a result of the *Finn* and *Thorpe* decisions of the Compensation Magistrates, the uncertainty was resolved. However in the *Anderson* decision, a Review Officer has effectively refused to follow the appeal decisions resulting in applications at WorkCover still being stuck in the system.

APLA has also provided submissions to the review of insurers' conduct and is actively providing submissions in respect of the national competition policy which seeks to introduce lay advocates in motor vehicle personal injury assessment matters.

The year ahead looks to be an extremely busy one coupled with prepa-

Western Australian Branch

rations which will begin shortly for May 2001 APLA (WA) State Convention.

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After the swearing in of the Bracks Labor Government in October 1999, the Victorian Branch was involved in negotiations with them to ensure that they fulfilled their election promise to restore Common Law rights for seriously injured workers.

The Government set up a Working Party to advise them on how such a restoration should occur. Richard Morrow, an APLA member, presented material and submissions on behalf of injured workers. Another APLA member, actuary Richard Cumpston, was also involved, analysing the statistics presented by the Department of Treasury and the Victorian WorkCover Authority, and challenging their conclusions. His efforts were significant in preventing the Government from completely backing down on their promise on the grounds of affordability.

The *Accident Compensation (Common Law Benefits) Act 2000* restored common law rights for workers who are seriously injured in the workplace after 20 October, 1999, the date that the Bracks Government was sworn in. Although this is a great achievement for workers in Victoria and for APLA, the legislation is disappointing. It has changed the definition of "serious injury" to make access to the Common Law more restrictive than it was under the Kennett Government's restrictions prior to the complete abolition. Unfortunately, the legislation is also not retrospective

despite repeated submissions from APLA and others that retrospectivity was both affordable and equitable. Nevertheless, it is unprecedented in this country to see the restoration of Common Law rights particularly for statutory workers' compensation schemes and the Victorian Branch hopes that other State branches will be encouraged by our success.

We are continuing to make representations to politicians regarding workers' compensation benefits and are currently seeking meetings with politicians regarding proposed changes to the *Transport Accident Act*. We were fearful of there being a flow on effect from the amendments to the *Accident Compensation Act* to the *Transport Accident Act* and these fears were realised when the Transport Accident Commission released a proposal for changes approximately four weeks ago. APLA Victorian Branch has produced a submission in response. No doubt this will be Victoria's next battle to protect Plaintiffs' rights.

Two main events have taken place in Victoria this past year. The Medical Negligence National Conference in March was a huge success thanks to the hard work of Irene Lawson and the Victorian members of the Medical Negligence SIG. The Victorian Branch

Victorian Branch

also held its annual State Conference at Mt Buffalo. This was a great success, educationally and socially, and planning is now underway for the March 2001 Conference.

We are continuing with the Litigation at Sunrise program under the organisation of Eva Scheerlinck. The Victorian Branch has also arranged a one-day training seminar on the 4th Edition of the AMA Guides to Permanent Impairment to be held on 6 September, 2000. The use of the 4th Edition AMA Guides have become more predominant with the new amendments to the *Accident Compensation Act* and are also used under our *Transport Accident Act*. In the circumstances APLA considers it imperative to have an intensive training program on the Guides to ensure Plaintiff Lawyers are better prepared for representing their clients.

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Tasmanian Branch

This is my last report as President for Tasmania as I have handed the baton to Roger Baker. Roger is a well-known Plaintiff's lawyer who practises from the 'country' - that is from Huonville a beautiful town about 25 minutes drive from Hobart. The Huon area is famous for apples but more recently aquaculture so Roger's practice has a real rural flavour to it. He is a well-respected and energetic practitioner and I wish him well as President.

The political scene in Tasmania has been stagnant for at least 12 months. About a year ago there were threats of an attack on common law in industrial accidents most notably from the Deputy

Premier. All is quiet on this front and that may in part be due to APLA members personally approaching our politicians. If we can claim the credit it is certainly the least expensive political campaign ever mounted by APLA.

I have very much enjoyed my time as the inaugural Tasmanian President and have benefited both personally and professionally from my involvement. I thank all members and particularly the

Tasmanian committee members for the opportunity I have had.

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