

A year in the life of APLA

It is almost impossible to believe that a year has passed. The last twelve months have been an amazing battle. What follows is a snapshot of APLA's public affairs activities this year.

While APLA saw signs of a tort reform campaign in the making at the end of 2001, we never thought we would go on the journey that has consumed the time and effort of all of our branch committees and APLA staff this year.

Our gratitude must be extended to APLA's National President, Rob Davis for not only seeing what was to come, but his energies in preparing for the war. His extensive research and analysis allowed us to respond when war was declared on 21 January 2002.

The Minister for Small Business, Joe Hockey stirred public sentiment on that fateful day when he said:

'...you know there is something wrong with our legal system when, if you fall off your chair at home, it's an accident, but if you fall off your chair in the shopping mall, it's an opportunity to sue somebody.'

Mr Hockey blamed 'greedy plaintiff lawyers' using 'no-win, no-fee' promises for the spiralling insurance costs.²

This misinformation received broad coverage at an otherwise quiet time in the media. It found support among the general community and was soon picked up by the Minister for Revenue and Assistant Treasurer, Senator Helen Coonan, as well as the New South Wales Premier, Bob Carr.



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Battlelines began to form, and slowly APLA began to identify the multitude of forces who would see the rights of the injured hacked away.

APLA's approach has varied from educating the community and debunking the myths, to providing the decision makers with reasoned and well-researched submissions on the facts. We have fought their facts with our facts, their myths with our truths, their profiteering with our heart and zeal.

To address the insurance crisis with a nationally consistent focus, Senator Coonan convened a ministerial meeting in March. APLA wrote a detailed submission to the ministers for their first meeting on public liability in March 2002.³ When the actuarial report to the ministers was released, APLA analysed it and prepared a paper of issues and concerns. The critique was forwarded to all the relevant ministers.

Similarly, APLA prepared submissions at a state level as the momentum for tort reform engaged Treasurers and Attorneys-General in every Australian jurisdiction.

When the New South Wales Government announced its tort reform proposals, APLA quickly prepared a response and brought its concerns to the attention of the government, the opposition and the cross-bench. With New South Wales keen to lead the way, and the government keen to blame the injured and their lawyers for the insurance crisis, APLA sought the help of other representative groups whose members would be disadvantaged under the proposed legislation. The 'Coalition for the Injured' was born and launched with 14 groups committing to the project.

This was also a time when APLA received a lot of media attention. APLA was sought for comment on the issues

and for opinion pieces in the newspapers. APLA was also sought as a consumer voice at various talkfests with chambers of commerce and industry around the country as well as volunteer groups and other organisations. APLA has developed a considerable profile in the past 12 months and will continue to benefit from this well into the future.

After the ministers had digested the first submissions on public liability, APLA continued to feed relevant information to the heads of treasury assisting the ministers.

Meanwhile, the Senate Economics References Committee was holding an inquiry into public liability and professional indemnity issues. APLA wrote a further submission addressing the terms of reference.⁵ In July, APLA made oral submissions to the committee.

As a backdrop for the various approaches to resolving the 'crisis', the HIH Royal Commission saw evidence of insurer incompetence and greed as witness after witness testified to the goings on before HIH's demise.

As stage one of the New South Wales legislation made its way through parliament, APLA continued to brief key Upper House Members in an effort to ameliorate the harsh nature of the Bill.

Similarly, the non-feasance decisions of May 2001⁶ were causing a stir among councils and the New South Wales Public Bodies Review Committee included the impact of the decisions in its inquiry. APLA made submissions to the effect that *Brodie* and *Ghantous* had clarified the law and would avoid unnecessary litigation in the future. The report tabled in October 2002 recommended that non-feasance not be reinstated. However, the government had included the reinstatement of the principle into legislation being considered by parliament at the time.⁷

Just as in New South Wales, the Victorian Government was similarly experiencing pressure from councils. The Victorian Department of Infrastructure held an inquiry into the legal duties of road authorities. APLA prepared a detailed submission to the department.⁸

Queensland saw its first stage of reforms passed in June.⁹ A considerable amount of work was done by the Queensland branch committee to avoid legislation that mirrored the New South Wales experience.

In South Australia, the branch committee avoided harsh legislation in relation to the liability of recreational service providers and was able to have risk management and responsible practices built into the model.

After Senator Coonan announced the Review of the Law of Negligence by a panel chaired by Justice David Ipp, APLA prepared yet another submission.¹⁰ This submission addressed not only the terms of reference, but also commented extensively on the process. A short time later, APLA made oral submissions to the panel.

An options paper was released by the Australian Health Ministers' Advisory Council (AHMAC) Legal Process Reform Group in September on medical litigation reform. The paper made recommendations in relation to the law of negligence and covered many of the areas Senator Coonan's panel was to investigate. The AHMAC paper did not condemn the common law system and was based on research and consultation with key stakeholders over a significant time frame. APLA was represented in the AHMAC consultative process.

Meanwhile, stage two of New South Wales' legislation was released in draft form. The government had not waited for finalisation of the panel process, or for the report of the Senate Economics References Committee. It also ignored the AHMAC paper. The exposure draft of the Bill put APLA on high alert. The legislation intended to impact on the definition of the law; the treatment of professionals under the law; the treatment of criminals and persons intoxicated; as

well as people engaging in recreational activities. APLA's concern with the broad scope of the Bill led to urgent meetings with the government and lobbying in other jurisdictions to dissuade them from the New South Wales path.

Meanwhile, the Productivity Commission was conducting its own inquiry into claims management practices, in an effort to report to the ministers on possible cost savers in the handling of insurance claims. APLA made oral submissions to the commission in September, with a follow up survey sent to APLA members to improve available data.

The Victorian Government was also under pressure to implement some reforms. After diligent lobbying by APLA and other groups, the Victorian Government introduced legislation. However, APLA's focus was directed at a proposed amendment from Independent MP, Russell Savage. APLA's attack on Mr Savage's proposals in the media and in his electorate saw the amendment defeated, and the opponent bitter.¹¹ APLA continues to work with the government, and has a representative on the Health Minister's Working Group on medical indemnity.

At a ministerial meeting in Sydney in October, Senator Coonan released the final Ipp Report. APLA spoke with the media outside the meeting reminding them of the reasons this process had commenced – high insurance premiums.

The Northern Territory Government released its draft legislation in November. APLA is a member of the government's working group and a lot of work remains to be done in that jurisdiction.

Similarly, at the time of writing, lobbying continues in Western Australia and Tasmania where legislation is being debated in parliament.

Submissions were made to all governments concerning Justice Ipp's recommendations. Separate submissions were produced for each jurisdiction, in light of the unique legal landscape in each state and territory.

The Senate Economics References Committee was granted a further line of inquiry in the public liability debate and

is concerning itself with the federal government's *Trade Practices (Liability for Recreational Services) Bill 2002*. APLA has lobbied key federal politicians concerning this Bill and also the Ipp recommendations insofar as they relate to the Trade Practices Act. APLA also made a written submission to the committee.¹²

Throughout the year, APLA has built new alliances and strengthened existing ones. The sharing of information has allowed strategic plans to be implemented across the country. APLA has juggled the various inquiries and jurisdictions as well as the multitude of stakeholders involved.

So, have we won the war? No. But the war is not yet over. We have been able to limit the casualties and gained some important concessions along the way. We have also been able to add another voice to the debate and keep the issue of insurer mismanagement and influence alive. The fight to protect injured persons' rights continues. **PL**

Footnotes:

- 1 Australian Financial Review 'Crackdown on Payouts for Injuries', 21 January 2002, p. 4.
- 2 *ibid*.
- 3 National Ministerial Summit into Public Liability Insurance, APLA, 20 March 2002.
- 4 Australian Financial Review, 'Leave the common law alone versus a public inquiry', 25 January 2002; Newcastle Herald, 'Laws that protect the common good', 5 February 2002.
- 5 Inquiry into the impact of public liability and professional indemnity insurance costs increases, APLA, 13 May 2002.
- 6 *Brodie v Singleton Shire Council and Ghantous v Hawkesbury City Council* (2001) HCA 29.
- 7 *Civil Liability Amendment (Personal Responsibility) Bill 2002* (NSW).
- 8 Road Standards and the Legal Duties of Road Authorities, APLA, 12 July 2002.
- 9 *Personal Injuries Proceedings Act 2002* (QLD).
- 10 Inquiry to Review the Law of Negligence, APLA, 2 August 2002.
- 11 Russell Savage, *Wrongs And Other Acts (Public Liability Insurance Reform) Bill*, Second Reading 8 October 2002.
- 12 Preliminary Submission to the Inquiry into the *Trade Practices Amendment (Liability for Recreational Services) Bill 2002*, APLA, 12 November 2002.

Queensland's Premier Conference for
Personal Injury Practitioners

2003 APLA Qld State Conference

7-8 February Hyatt Regency Sanctuary Cove

Affordable □ Educational □ Practical □ Relaxing



The conference's leading edge CLE program includes sessions on Workcover, PIPA, Motor Vehicle Claims, Law Office Management, Avoiding Time Limit Problems and Public Liability.

Trial School:

A special Trial School for junior plaintiff lawyers will run parallel to the main conference. Registration to the Trial School is restricted to articulated clerks and solicitors with less than two years post admission experience.

The Trial School will be presented by a panel of APLA members including

Gerry Mullins, Barrister
Simon Morrison, Shine Roche McGowan
Travis Schultz, Boyce Garrick

Topics to be covered include Statements of Loss and Damage, Client Relations, Briefing Counsel and Expert Witnesses. The format will include presentations, case studies and group discussions.

apla Diary

11 December 2002

Victoria Branch Christmas Drinks

Royal Melbourne Hotel

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21 December 2002

February Plaintiff Copy Deadline

Theme: Health Law

CONTRIBUTIONS: lhayward@apla.com.au

7-8 February 2003

Queensland State Conference

Hyatt Regency Sanctuary Cove

ENQUIRIES: tdickson@apla.com.au

21 February 2003

April Plaintiff Copy Deadline

Theme: Damages

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February 2003

NSW Litigation Seminars

Newcastle and Goulburn

Dates and Venues TBA

ENQUIRIES: tdickson@apla.com.au

14-15 March 2003

NSW State Conference

Manly Pacific Parkroyal

ENQUIRIES: tdickson@apla.com.au

21 April 2003

June Plaintiff Copy Deadline

Theme: Children's Injuries

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Every effort will be made to keep to the descriptions above, however, some changes may occur. Please contact APLA for more information on any of the events listed on PHONE (02) 9698 1700.