

The APLA Update

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APLA

**Australian
Plaintiff
Lawyers'
Association
(APLA) Inc.**

PRESIDENT'S PAGE

Peter Semmler QC, APLA President

A few weeks ago an article appeared in the *Sydney Morning Herald* (as well as in newspapers in other parts of the country) entitled: "The harm done by silicone breast implants may prove an invention of greedy lawyers."

The author stated that: "many lawyers impose heavy indirect costs on the community...nowhere is this more the case than in the attempt to impose stricter and stricter tests of liability on manufacturers and other providers of goods and services, and to demand huge compensatory settlements even when there is no way they could have known, or been in any ordinary sense of the word responsible, for the harm supposedly done by their products."

The article went on to denigrate the "long saga of propaganda and legalistic campaigning against smoking and the tobacco industry" as well as the claims resulting in a settlement ("succumbing to legal blackmail") by asbestos victims against "one of our biggest companies". The article concluded with the suggestion that the lawyers who had promoted fears in people of ill-effects from CJD disorders and breast implants ought to be held morally and financially responsible.

Propaganda against lawyers acting for personal injury plaintiffs is easy to produce and difficult to disprove. Such lawyers are conspicuous targets with few friends. The people whom they help the most, the seriously disabled victims of negligence, are amongst the least powerful and most disadvantaged individuals in the community. On the other hand, those whose economic interests are adversely affected by our success, the large corporations, the insurance industry, professional bodies and government bureaucracies are some of the most influential groups in society.

All over Australia today such groups are lobbying and legislating to abolish, cap or restrict the rights of injured plaintiffs to proper compensation. If they have their way economic rationalism will prevail over the human needs of the victims of careless and socially undesirable behaviour.

One of the few organisations which is prepared to fight to preserve the remaining rights of victims of negligence is APLA. The association has been in operation for just over a year now and recently held its Annual General Meeting. APLA's list of achievements in its first year of operation is impressive. Many of them have been reported in earlier *Updates*. They range from successful lobbying in New South Wales to prevent the further erosion of the

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right to trial by jury in civil cases, to a face-to-face meeting with Dr Fiona Tito, which resulted in a most favourable response to our submissions about the need to preserve common law medical negligence actions.

We have made lengthy submissions to government inquiries on a wide range of issues affecting plaintiff lawyers throughout Australia, including litigation cost rules and proposals for changes to the present system of compensating injured workers.

In various states we have held numerous successful seminars on issues of practical importance to plaintiff lawyers. We have established an extensive expert database available exclusively to APLA members to assist them in locating suitable experts from all over the country.

Our membership is growing. Between July 1994 and August 1995 it increased by nine per cent each month. We are financially buoyant and we are using some of our funds to update our computer equipment to meet the demands of our expanding membership.

Nevertheless there is no room for complacency. Articles such as the one referred to above are indications of the depth of hostility and resentment in some sections of the community towards the prosecution of innovative causes of action by plaintiff lawyers on behalf of injured people. We should strive to consolidate and expand our achievements and to increase our membership in all states over the coming year.

Executive Officer's Report

Anne Purcell

Since the last newsletter all members should have received a copy of our latest APLA Membership Directory. As you can see our membership directory has grown substantially in size. The directory is a quick and easy way of putting you in contact with fellow members.

Also since the last issue APLA has held its AGM. The proposed changes to the constitution were passed by those those present and the Committee was re-elected.

Queensland and Victoria branches also held their AGMs. If you would like further information regarding these meetings, please phone me on (02) 262 6960.

The expert database is being updated. If you have any experts which you would like to add please fax the details to Anne Purcell on (02) 262 6935.

Inquests: Their Role In Medical Negligence Actions

Stephen Walmsley, Barrister, NSW

(Paper given at NSW APLA Litigation at Sunrise Seminar 3.8.95)

The nature of the enquiry

In important respects, an inquest resembles a mini Royal Commission. The coroner, while conducting the proceedings, has his terms of reference dictated by ss22 and 22A of the *Coroners' Act* (to determine whether a death has occurred, if so, identity, date and place of death, manner and cause of death; make recommendations). The rules of evidence do not apply (s33). One must seek leave to appear, there being save in the case of deceased's relatives no automatic right for any party to appear (s32). The enquiry may become wide reaching, and involve criticism of the activities or the inactivity of a large number of people, many of them blameless. And when, finally, the coroner's findings and any recommendations are delivered, they typically receive ill informed press coverage. Whether recommendations made have any effect on improving such things as health facilities, one cannot judge, but it is easy to be cynical on the topic.

The coroner's role

Though the coroner's role covers *inter alia* administrative and investigatory matters, we mainly come into contact with the judicial and educative roles. The coroner must try to determine manner and cause of death. The educative role is discretionary, in the sense that recommendations may or may not be made at the conclusion of the inquest.

For the purpose of this paper I shall confine my comments to deaths occurring through medical misadventure. The role of the plaintiff's solicitor or barrister is typically to ascertain whether there is a cause of action to be found, so the relatives can launch a compensation to relatives or a nervous shock claim or both. The role of the health carer's representative is damage control, attempting to show their client is not to blame for anything or if he or she is, then that someone else should share the blame. There is a potential tension between the coroner's role and the relatives' representatives' role. The coroner will typically and correctly wish to confine the enquiry by reference to statutory obligations and powers, whereas lawyers for the relatives will wish to go further and have the enquiry deal with matters which might be suggestive of