

Queensland Report

The Workers' Compensation Board of Queensland (WCBQ) is having a second assault on workers' common law rights in less than twelve months.

The Kennedy Commission will report to government by 30 June with recommendations as to how workplace injuries should be compensated. Common law access is in the slot for abolition or severe curtailment.

The APLA submission has asked for the harsh provisions of the 1994 amending legislation (which came into effect for injuries on and after 1 January 1996) to be ameliorated. In particular, APLA has sought a relaxation of the 20% bodily disability election threshold to a \$20,000.00 common law damages threshold.

The initial view of the Commissioner appears to be that the overriding outcome is for Queensland to remain a low tax state and for the scheme to be self funding. The WCBQ has provided information that claims continue to escalate in accordance with the trend revealed as at June 1995. As yet there is no information relating to post 1 January 1996 injuries.

APLA believes that the review of the scheme within six months of the commencement of major amending legislation is entirely futile. The Commission has also been told by the WCBQ that there is now a strict liability situation for common law claims. APLA has pointed out that all claims are principally on a negligence basis. The Queensland APLA Member's responses to the Workplace Injury Survey will assist APLA's submissions relating to the effect of the recent amendments and the fact that strict liability does not in fact prevail. Please forward your response as soon as possible.

Queensland members will be circulated with a Member Issues Survey on a number of topics. Members are asked to return the survey forms as soon as possible. The responses will help us decide future directions on the areas which concern members most.

The delay in processing Health Insurance Commission (Medicare) charges is becoming a catastrophe for APLA members and their clients.

The branch has protested to the Federal Minister and is endeavouring to arrange a press campaign to illustrate the harsh consequences to injured persons of the charges process.

Legal action by way of judicial review to the Federal Court is being considered by members in cases where Medicare goes beyond the 28 day period for the issuing of a statement of benefits or particulars of charges.

New South Wales Report

The NSW branch continues its lobbying of government, both Federal and state, on issues of significance to plaintiff lawyers.

In conjunction with the Queensland branch, the NSW branch is maintaining a dialogue with relevant Federal Cabinet Ministers agitating for sensible amendments to the Medicare legislation. At the time the *Health and Other Services (Compensation) Act, 1995* became operational on 1 February, the then Federal government was in the midst of an election campaign. Representations were renewed upon the election of the new Government.

APLA's position has been consistent and clear. We have acknowledged throughout our lobbying the appropriateness of reimbursement of injury related Medicare payments at the conclusion of successful personal injury proceedings. What is not appropriate is the placement of an HIC charge over the whole of the compensation funds. The delay of the HIC finalising their internal administrative arrangements by, on average, 4 to 5 months has led to further delay and confusion both for plaintiffs and their lawyers.

With a strong media campaign conducted by APLA on a national basis in recent weeks and threatened Federal Court proceedings, we are hopeful of some positive results.

On a more local front, we have written to the Attorney Jeff Shaw, MLC requesting him to consider an anomaly in the Legal Profession Act, 1987. Section 208H of the Act provides that costs assessors appointed under the Act are not able, when assessing costs, to take into account any costs agreement in force. The Act clearly provides that parties may enter into a conditional fees agreement that provides for a 25% premium which is payable in the event of a successful outcome by the plaintiff. The costs assessor is not able to make any award in relation to this percentage uplift. This is particularly unjust in cases where plaintiffs are the recipient of an order for indemnity costs. We have requested the Attorney to consider an appropriately drafted amendment to the legislation.

NSW branch celebrates National Law Week with an evening function on the topic of 'Dealing With the Media'. A panel of speakers includes Stuart Littlemore QC, Peter Cashman, Janet Fife-Yeomans of The Australian and Deborah Cornwall from the Nine Network.