

Scheme of the Workers' Compensation and Rehabilitation Amendment Act 1993 (W.A.)

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There has been what the writer suggests is a confusion in the construction and roles of the following sections of the Workers' Compensation and Rehabilitation Amendment Act 1993 (WA);

1. the requirement and construction of section 93D;
2. the role and effect of sections 17, 11 & 13.

An interesting decision which, for the first time, looks at the entire scheme under which the above sections of the Act operate has been delivered by Deputy Registrar Harman in the case of *Seddon v Minister for Health* (District Court Action No 4692 of 1994, delivered 9 April 1996).

Members are urged to read that decision which has been appealed by the Minister for Health and heard on 7 June 1996, decision reserved, before Chief Judge Hammond.

At the risk of simplifying the issues, the Minister for Health argued that because a Writ had not been served together with the Certificate of Registration within 90 days of the date of issue of the Certificate, the Writ was a nullity under section 17 and there appeared to be a few decisions which supported the argument. Deputy Registrar Harman disagreed with this reasoning.

The argument on behalf of the plaintiff was that section 17 gave no authority for such a Writ to be declared a nullity and that the cases that purported to declare this to be so were a confusion of the effect of section 17, section 11(1) and sections 13(1) of the Act.

The case will have continuing effect because some insurers' solicitors are of the view that the so-called transitional provisions of the Act continue to have effect even up to date of trial.

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The Eleventh World Congress of Anaesthesiologists

Brian Donovan QC, NSW

The Eleventh World Congress of Anaesthesiologists was held in Sydney from 14 to 20 April 1996 at the Convention Centre, Darling Harbour. There were over 5,000 attendees from around the world.

The matters which may be of greatest interest to lawyers were the medical legal session which took place as one of the group sessions for the whole of the Monday, the first day of the Congress, and the demonstration legal trial which took place as a plenary session on the afternoon of Friday, the final day of the Congress.

The first medical legal session on the Monday was chaired by Dr Noel Cass from Melbourne. The panellists were: Frederick W Chaney (USA), Andre Lienhart (France), David McConnel (Australia), Alan Merry (New Zealand), Tom Taylor (UK) and Jaime Wikinski (Argentina).

The Chair of the second session was Professor Chaney and the panel was Noel Cass (Australia), Jan Davies (Canada), John M Gibbs (New Zealand), Saywan Lim (Malaysia), Nelly Moerman (Netherlands), Yasuhiro Shimada (Japan), Sheila Willatta (UK).

I have listed all the participants because as can be seen these doctors reflected a wide range of medical practice throughout the world. The interesting point was that in all the countries there has been a growth in medical negligence claims. This is even so in Japan although, as might be expected the numbers are still relatively low.

The stage to which the process has developed varies from country to country. Generally speaking the ranges of damages are fairly consistent with the major exception of the USA. The large USA verdicts, which have received so much publicity, are due to unlimited amounts for general damages and for aggravated and exemplary damages.

Most of the other countries had either a legal limit or a practical limit on damages for pain and suffering such as tends to apply in Australia. There were some exceptions to the development of medical negligence, for example New Zealand with its universal compensation scheme. However New Zealand is said to have run into problems in funding its universal scheme.