

Tito Inquiry into health care were an important factor in the preservation of the medical negligence action. In this state APLA has played an important part in recent months in preventing the passage of changes recommended by the Kennedy

Commission of Inquiry.

The disadvantage suffered by individual lawyers acting for plaintiffs compared to their better financed counterparts acting for insurers and medical defence unions is being addressed by APLA.

Four years ago, in medical negligence cases for example, the absence of an effective network amongst plaintiffs and the inability to identify and access an expert prepared to assist prevented many otherwise meritorious cases from succeeding in court. Our expert database now contains over 300 experts all of whom have been recommended by APLA members who are prepared to provide opinions for plaintiffs.

Our regular publication, the APLA Update, contains up to the minute information concerning developments in, and attempts to dismantle, the common law in this country. Our special interest litigation groups provide opportunities for networking and the sharing of specialist information about particular classes of case. I believe that all of us will benefit from the outstanding papers which are to be presented over the next three days.

Despite our success to date there is no room for complacency. Plaintiff lawyers are the keepers of the common law. We cannot rely upon law societies and bar associations to protect the interests of plaintiffs and their lawyers.

Unless lawyers who understand, take a stand, one day the nation's courts and common law processes could become the exclusive preserve of defamation litigants, corporations and criminals. The people who deserve most to have access to our courts, the victims of accidents caused by the carelessness of others, will be shut out.

If organisations such as APLA do not take the lead the common law rights which have served people so well for so long will disappear, completely and forever. Rather than stability and savings the result will be an increase in harmful conduct and cost. Rather than progress the outcome will be a return to a less fair and less responsible society.

References:

1. Decision of New South Wales District Court jury given on 27 May 1992.
2. (1992) 175 CLR 479

Medical Negligence Special Interest Group

**Catherine Henry, MacMahon Drake Balding,
Sydney, Convenor, Medical Negligence Group**

It was encouraging to have a full room of people at the first meeting of this Special Interest Group at the Noosa Conference in October. The group resolved to have meetings in each state (ideally to feature a guest speaker) throughout the year with the following state convenors responsible for branch activities:

NSW: David Hirsch, Cashman & Partners, Sydney

VIC: Andrea Wallace, Holding Redlich, Melbourne

SA: Jessica Hope, Xenophou & Co, Adelaide

NT: John Neill, Ward Keller, Darwin

QLD: Gemma McGrath, Cartner Capner, Brisbane

WA: Nick Mullany, Barrister, Perth

Minutes of the Noosa meeting have been sent to those who attended the first meeting.

It was also resolved that some form of transcription of the proceedings of future meetings in the various states should be maintained for the membership of the SIG as a whole. The mode of recording will obviously be dictated by cost considerations and this will have to be monitored over time. There will be one face to face meeting each year at the National Conference. Of course, interstate members should feel encouraged to attend meetings in other states throughout the year if individual practices (and finances!) permit.

Fiona Campbell of Vizzone Ruggero, Solicitors in Sydney has kindly agreed to act as Secretary of the Group. Any correspondence which is to be circulated to members of SIG concerning state meetings or any other matter of interest should be sent to Fiona for distribution at the following address:

Fiona Campbell, Vizzone Ruggero, DX 242 Sydney or 1129 Botany Road, Mascot, NSW 2020 Fax: (02) 9317 5715

The general aims of the SIG are agreed to be as follows:

- To keep members apprised of recent developments and cases settled, determined by the Courts and "in the pipeline" by means of exchange between members;
- To facilitate exchange of pleadings in medical negligence matters between members;

- To act as an information conduit for information on cases, issues, experts and other relevant matters.

Communication will be via the APLA Update initially.

NSW meetings

The **NSW meetings** for the first half of 1997 will be held in Sydney at the offices of Cashman and Partners and have been scheduled as follows:

Thursday 20 February 5.30pm

Guest Speaker:

Dr David Quinn, St Vincents Hospital

Topic:

The Role of Junior Medical Officers in the Public Hospital System

Date to be advised

Guest Speaker:

Dr Bill Roney, General Surgeon

Topic:

Laparoscopic Surgery Claims

STATE REPORTS

Victorian Report

Angela Sdrinis, Ryan Carlisle Thomas, Melbourne

The recent APLA National Conference was well attended by Victorian members as participants and with several speakers as well. All APLA members who attended will agree that the Conference was a great success and hopefully came away thinking that APLA has much to offer to plaintiff lawyers.

Recent events in Victoria have certainly brought home the importance of this organisation.

Plaintiffs' rights have again been attacked by the Kennett government with the abolition of lump sums for pain and suffering for victims of crime and further significant changes to the Victorian WorkCover and Transport Accident Schemes.

In summary, the changes to both the Accident Compensation and Transport Accident Acts include the exclusion of psychological reactions "secondary" to the injury for the purposes of calculating the level

of impairment. This will further restrict the already limited right to sue in these jurisdictions.

Further, under the No Fault component of the WorkCover scheme, lump sum entitlements will be paid as annuities over five years. As many workers have traditionally used these lump sums to pay off mortgages or accrued debts after reductions in income which result from injury, these changes will have a significant effect on the well-being of workers and their families.

Further, it appears that the Department of Social Security will regard these periodic payments as income and that any interest component will be subject to taxation. This will further erode and legitimate entitlement.

All APLA members will have received a summary of the changes. APLA members have also met to discuss the impact of the changes and a press release was distributed. We need to keep the pressure on and we will continue to do as much as we can to protect plaintiffs' rights.

The importance of APLA was also underscored by the passing of the new Legal Practice Act which significantly deregulates the legal profession. Whilst the Act may improve services to clients and indeed may also work to enhance APLA's role, it must be seen unfortunately in the context of a government which seeks to attack rather than work with lawyers. It is early days to assess what the real impact of the changes will be. It does however introduce a wider range of criminal sanctions for regulatory breaches of the Act and it also introduces onerous provisions with respect to the old Rule 12 requirements.

On the other hand, it introduces the concept of Recognised Professional Associations (RPA's) and APLA may position itself to be an RPA at some time in the future.

Even though the Victorian state branch has yet again had to concentrate on warding off government attacks it has still found time to pursue our other activities including the coordination of APLA's response to the Heads of Workers' Compensation Authorities (HWCA) Report and organising a seminar on the Trade Practices Act which was well attended and very useful.

A programme of seminars for next year is also organised, details of which will be published in the next Update.

The members of the Victorian branch look forward to an even more successful year in 1997 and take this opportunity of wishing all APLA members a happy and prosperous New Year!