

economically sound. It follows, for this and other reasons, that any scheme for further space for chambers, must be economically practicable and must thus be based upon payment of commercial rents or provision of adequate capital to finance a co-operative plan. Those who are shareholders in Wentworth Chambers still enjoy relatively cheap rentals (though these may be affected to some extent in the future by rising land values) because of wise investment policy and planning in earlier years but members of the Bar not shareholders in those Chambers and persons coming to the Bar in the future, like persons joining all other professions, must face the financial problem involved in providing chambers.

It is certainly in the interest of the Bar to seek ways and means of mitigating the impact of this financial problem on young men especially because of the desirability of ensuring the continuance of democratic recruitment to the Bar and everything will be done to help in this way. However it was always difficult to get started at the Bar. Once income was the trouble, now it tends to be chambers and the need for some capital. It would be unfortunate if the Bar, which has to a great extent solved its problems individually in the past, is unable to find a sensible mixture of co-operative effort and individual initiative in the future. Some think that the vigorous and successful development of communal institutions in recent years is sapping individual effort and initiative and producing a situation in which all look to the Bar Council or Counsel's Chambers to solve all problems. These institutions are built on individual initiative and can only thrive if self help is still a major factor in life at the Bar.

It may be added to what appears above, that the committee of those who will not be housed in the enlarged Wentworth Chambers has already entered into negotiations for the taking of two floors in a city building and if these are successful, the immediate problem of housing may be solved.

CONTRIBUTORY NEGLIGENCE AND THE ADMIRALTY RULE—AN ADDENDUM

The last Gazette (No. 4) contained a summary of a report on this subject matter which raised a number of matters which would need consideration before the precise form of amending legislation could be determined. The sub-committee has, since the last report, considered a number of these matters and has reached conclusions on them, and for the sake of completeness it is considered that these conclusions should be noted. In what follows the question posed in each case by the committee has been noted with the recommended answer to the question noted immediately past it.

- (1) Do problems arise from the last opportunity doctrine and should some attempt be made in the legislation to abolish it?

Recommendation: That in any amending legislation no specific reference be made to the doctrine on the last opportunity and that the Victorian rather than the Western Australian approach be adopted.

- (2) What provision should be made in respect of compensation to relatives' claims?

Recommendation: That as a matter of policy no recommendation be made other than indicating the view that it is in keeping with legal principle and principles of fairness and present social trends that the amendment having the effect of abolishing the defence of contributory negligence of the deceased should not as in other States make provision to apply the scaling down principle to these cases.

- (3) In cases of statutory causes of action should damages be reduced because of the fault of the plaintiff?

Recommendation: That, because liability in these cases as a matter of Government policy was made absolute and the reform does not directly raise or require alteration of this principle, this be pointed out with an indication that the Council considers the reform can be made without affecting the present liability, and the Council make no recommendation for any alteration of such absolute liability.

- (4) Whether in dealing with matters of jurisdiction and limitation of liability and the like, regard should be had to the gross amount of damage suffered, or the scaled down nett sum?

This question had in particular reference to the limitation of liability in the District Court and in Small Debts Courts.

Recommendation: The matters referred to should be limited by the nett amount recovered and amendments to achieve this with certainty should be adopted.

- (5) Whether in dealing with matters of costs such as rules to entitlement to costs or scales of costs the gross or the nett sum should be applied.

Recommendation: That except so far as in special cases some provision is made to the contrary, entitlement to and scale of costs be according to the gross damages sustained.

- (6) Whether any problems special to New South Wales arise because of our pleadings and whether it is desirable to frame special rules regarding pleadings, particulars, taking of the jury's verdict, etc.?

Recommendation: That the reform (and any necessary rules) be so drafted that

- (a) Separate findings are made by the Judge and jury in respect of
- (i) Whether the finding is for the plaintiff or the defendant on the plaintiff's allegation against the defendant
 - (ii) If for the plaintiff on (i) the total amount of the plaintiff's damage caused by the fault of the defendant
 - (iii) For the plaintiff or the defendant on the defendant's allegation of contributory negligence

- (iv) If for the defendant on (iii) the percentage by which the gross sum found is to be reduced
- (b) The defendant either by pleading or particulars (to be delivered with his defence) be required to raise and define any allegation of contributory negligence.

Workers Compensation Problems

The Committee in the course of its supplementary report considered a number of problems which arose from the provisions of the Workers Compensation Acts. These matters together with the recommendations are as follows:—

- (1) Where a worker recovers, first, workers compensation, and then a scaled down verdict against a third party, whether the obligation to repay the workers compensation under Section 64 (a) should be to repay it in full, or to pay an equivalent scaled down amount.
- (2) Where a worker recovers workers compensation, whether the right of the employer against a tortfeasor under Section 64 (b) should be to a scaled down proportion if contributory negligence of the worker be established, and, if so, whether there should be consequential amendments to Section 64 (b) and Section 64 (c).
- (3) In the event of scaling down applying to workers compensation payments in respect of either (1) or (2) above, whether any limitation should be applied as to
 - (a) Lump sum payments under Section 16 and/or Section 15 of the Workers Compensation Act;
 - (b) Lump sum payments to dependant and/or weekly payment to children of a deceased worker assuming the scaling down provisions of the reform are applied to compensation to relatives cases;
 - (c) Time during which compensation payments are received.
- (4) Where a worker recovers workers compensation and subsequently gets a scaled down verdict against his employer, what consequences should flow and in particular:
 - (a) Should the full or a scaled down proportion of the workers compensation paid be set off against the judgment under Section 63 (5);
 - (b) Should the workers compensation award or the verdict prevail and in particular:
 - (i) Should the matter simply be left that it is expressly provided that the plaintiff should have the option whether to sign judgment and, if he does not sign judgment, what happens about costs; or
 - (ii) Without option of the parties, should the workers compensation award stand, and, in the common law action, should a judgment for the defendant be entered; or

- (iii) Without option of the parties, should judgment be entered so that the common law verdict operates and the further operation of the award ceases.
- (5) Where a worker has not received an award of workers compensation (although, perhaps, he has received payments without an award) but is entitled to workers compensation if an application had been made at the time of the commencement of the common law proceedings and where he receives a scaled down common law verdict against his employer, whether machinery should be provided (perhaps to be invoked by an appropriate notice by the plaintiff if the defendant pleaded contributory negligence) so that the Judge would determine whether the verdict or a workers compensation award was more beneficial and then enter the one more favourable to the worker. If such a provision be made, should the plaintiff have an option which to take, and, if so, should it be exercised immediately after the jury's verdict, or after the Judge's determination on the alternate award? What provision should be made regarding costs?

The recommendation which the sub-committee made was: That at the time of the reform consideration be given to the problem which exists in the application of Section 63 and Section 64 of the Workers Compensation Act where a scaled down verdict is given and that the following view be expressed:

- (a) No principle of law is involved and the problem must be considered in the light of the existing workers compensation legislation and problems special to New South Wales
- (b) A practical solution to the problem which appears consistent with the existing legislative and social approach of this State would be to provide for scaling down of repayments, indemnity payments, or set offs under Section 63 and Section 64 in respect of workers compensation paid by way of medical expenses or weekly payments in respect of a period of, say, three years from injury. This would require amendments of at least Section 63 (5) and Section 64 (a), (b), and (c).
- (c) The principal problem could be met as in (b) above without scaling down the obligation to repay lump sums under Section 15 or Section 16.
- (d) Death cases would need separate consideration in the event of the recommendation made elsewhere that there be no scaling down of such cases at common law not being applied.

This supplementary report of the sub-committee has been placed before the Government Law Reform Committee to assist it in its consideration of the problems which arise in the consideration of whether or not the defence of contributory negligence should be abolished as a defence and the principle of modification of damages according to the degree of negligence of the plaintiff adopted in its place. It is felt that the two reports submitted by the sub-committee will be of the greatest assistance to the official committee on its deliberations on this subject.