

# Bill of rights for Australia

Peter Carter, Carter Capner, Brisbane

APLA is supporting candidates for the 1998 Constitutional Convention running under the banner *Bill of Rights for Australia*.

The candidates are:-

Richard Carew (Qld); Cathy Henry (NSW); Jeff Coates (Vic); Jay Wetherill (SA); and David Clyne (WA)

In many ways the constitutional guarantee of individual rights, including a guarantee of the right of access to the common law, is more important to Australians than whether or not Australia becomes a republic.

The aim of the campaign is to hoist the Bill of Rights issue further up the agenda in the republic debate.

We need to get access to common law on the agenda of those already concerned about a Bill of Rights.

We also need to get the concept of rights firmly implanted in the consciousness of the public, so that they understand that they will be losing something of value every time a government seeks to curtail access to the courts in some way.

It is also an opportunity for APLA to build liaisons with other important community groups.

With a considerable degree of media exposure likely to be devoted to the republic issue over the coming months, this is an opportunity for our side of the rights debate to go on the offensive rather

than act in a defensive situation which so often occurs.

We all wish the candidates the best for the campaign and election.

Members are urged to seek the support of their staff, colleagues and friends in building the vote for the Bill of Rights candidates, to help ensure that the rights Australians are entitled to take for granted are safeguarded and fundamental freedoms are preserved for future generations. ■

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# Failure to diagnose myocardic infarction

*Perth Hospital and Whitaker v Frost*  
Peter Carter, Carter Capner, Brisbane

This is an unreported decision of the West Australian Full Court delivered on 26 February 1997.

On 6 April 1988 Mr Frost, aged 34, woke up with chest pain at 3.00am. At 4.00am he arrived at the Perth Hospital by ambulance with crushing chest pain.

A history was taken by the resident, Dr Whitaker. She ordered an ECG (done between 4.05am and 4.25am) and administered oxygen. A diagnosis was made "unlikely ischaemic chest pain - probably gastric".

He was later reviewed by the registrar, who by then had the full history. The Registrar was aware from the history that Mr Frost had had a previous angiogram taken a year or so earlier which revealed no cardiac abnormality. At 7.00am he was allowed "to

go home" and told to take analgesics for the gastric upset.

At 7.30am he went to bed at home after taking some disprin or aspirin. His wife made an appointment for him while he slept and took him to see Dr Esslemont at 10.15am.

Dr Esslemont, a GP, diagnosed that he had a myocardic infarction. He sent the patient for a blood test which later in the day revealed elevated cardiac enzymes. At 8.00pm that evening Mr Frost returned on Dr Esslemont's advice to the Hospital and was admitted and appropriately treated.

The trial judge found the hospital and the resident both liable in negligence for failing to admit the patient for observation, further investigation including a second ECG, blood tests and more potent analgesics. The

judgment was not for failing to diagnose the infarction per se.

This was a modest claim: damage to the left ventricle due to the delayed treatment. The plaintiff was awarded \$10,000 for pain and suffering and loss of enjoyment of life and \$2,000 for loss of life expectancy. The total damages were \$12,500.00 which presumably included some expenses and interest.

The findings of fact of the trial judge were essentially as follows:-

- it was unlikely the infarction occurred before 4.00am given the normal ECG. [However there was some dispute of this and the judge assumed for his judgment it was around 3.00am]
- the infarction would have been detected had a second ECG been given at 6.00am or at any time before 9.00am