

APLA WA fights to retain rights for injured

Sukhwant Singh, Perth

The rights of injured persons in Western Australia are under attack on a number of fronts. This article highlights the problems faced and the action being undertaken by APLA in WA to remedy the unfair situation being faced.

Workers' Compensation

The WA State Government has begun a media campaign in support of the *Workers' Compensation and Rehabilitation Amendment Bill 1997*. The Bill attempts in part to resurrect a previous bill, the *Workers' Compensation and Rehabilitation Amendment Act 1995* which was not progressed by the government in early 1996, presumably because of the elections in that year which the present Liberal Government won.

One immediate matter of concern is another (in a series of ongoing) attack on the rights of injured workers. It is proposed to amend Section 93D to delete *future pecuniary loss* and restrict it to *future loss of earnings*.

APLA WA has been running a campaign against the 1997 Bill and urging unions and others to raise public debate and profile on the issue. Clearly, the further attacks on injured workers' rights will effectively mean that it is about time workers be informed that they should not rely on workers' compensation policies of their employers to tide over the bad times created by injuries and disabilities. Many employers do not appear to be adequately covered or covered at all and concerns have been expressed both by unions and by the Chamber of Commerce and

Industry in WA about recalcitrant employers in this regard. It is also about time that workers be informed that they have to pay the cost of taking out their own disability insurance policies to protect their financial positions and those of their immediate families when an injury at work occurs.

Members in WA may wish to obtain copies of letters that APLA has been sending out to Members of Parliament and should contact Sukhwant Singh to obtain copies.

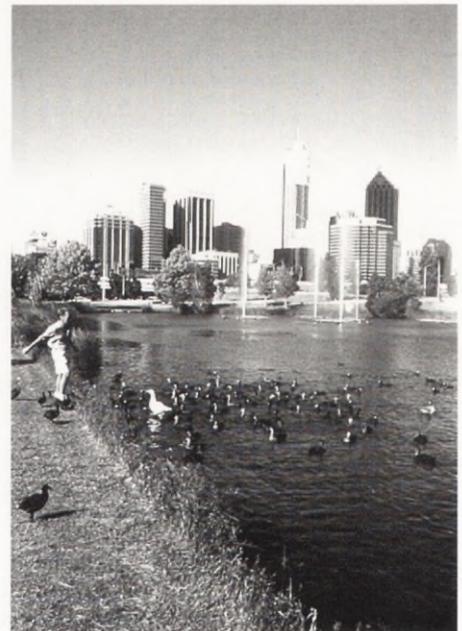
Rumours abound in WA that the Government may attempt to delete all common law rights for injured workers in Western Australia.

Members may also wish to obtain a copy of the Chief Justice's Report on Gender Bias issued 30 June 1994 which expresses concern that Section 93D has an inherent bias against women and APLA WA has raised the issue with the relevant Minister.

Motor Vehicle Accidents

Proposals are being initiated in the District Court of Western Australia for civil procedure reform particularly relating to personal injury claims arising from motor vehicle accidents. Submissions have been made by various parties including the Insurance Commission of WA (formerly the State Government Insurance Commission) the monopolistic statutory insurer in Western Australia, and APLA.

APLA's position is that the proposed reforms are in principle agreeable and should be implemented as soon as possible. These reforms focus on negotiations



prior to issue of proceedings. Because such a system will provide real and tangible benefits for injured claimants, APLA supports the position. Members who are interested in copies of exchanges and submissions should contact Sukhwant Singh.

APLA has also proposed to ICWA that it looks again at its policy on physiotherapy treatment costs and psychological assessment costs. ICWA's position in many cases is that if the insurer-appointed specialist concludes that such treatment is not providing long term benefits, ICWA refuses to fund the cost further. This position ignores the fact that an injured claimant receives benefits from such treatment in the short to medium term thereby reducing ongoing pain and suffering (and the Continued on page 7

values by up to about 5%, with the increases being highest for older persons at low interest rates. Increases of up to about 7% can occur in joint life annuity values, sometimes used in estimating the value of services that might have been provided by a deceased spouse.

Because mortality rates up to age 65 are already low, the financial effects of allowing for future mortality reductions up to age 65 are small. For example, we estimate the value in 1998 of \$1 a week to age 65 to a male aged 40, with a discount rate of 3%, as \$894.5. This is 0.8% more than

the \$887.3 that would be estimated using the Australian Life Tables 1994-96. ■

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...impact thereof on the life of the injured) and reducing the prospects of the claimant suffering psychological sequelae arising from the accident.

APLA has also invited ICWA to consider setting aside monies for the purposes of research into injuries arising from motor vehicle accidents, in particular, whiplash type injuries. There is considerable scepticism amongst those advising injured claimants, not merely the medical practitioners, particularly regarding the long term effects of such injuries.

APLA has also written to the Office of Road Safety, Dept of Transport and ICWA supporting their media campaigns promoting road safety and bringing to the attention of the Department of Transport common causes of motor vehicle accidents with a view to urging the Department to promote a media campaign supporting the Police and ICWA. For example, in their campaigns to educate the public on the causes of road traffic accidents.

Legal Costs

APLA considers that the legal profession has not adequately dealt with the complaints of the public regarding legal costs and, each time such issues are raised, they appear to be diverted towards access to justice.

It is about time the legal profession in WA grabs the bull by the horns and deals

solely and in a focussed way with issues relating to legal costs and APLA has made submissions to the Attorney General of WA and the Law Society. It is about time that we hold a icrisis meeting on costs within the legal profession, call for public submissions, prepare a discussion and consultation document and initiate proposals for reform in this area. It is practically impossible to explain to a non-lawyer the District Court scale of costs and indeed a taxing officer has been heard to say that he 'does not understand the scale'.

The legal profession generally is committed to the legal wellbeing of the people we serve but our commitment and efforts are blunted by unjustified attacks on the profession by a sceptical public whose fears are being fanned by cunning politicians running agendas of their own. Each time reform in the personal injury areas have been mooted, the government has rested its rationale for the reforms upon alleged abuses by the legal profession of the system and lawyers imaking money from the system. This uneducated approach is most regrettable and APLA has protested in the strongest possible terms to the appropriate persons.

Nevertheless, there are some elements of truth in the concerns of the community in WA and it is essential that we deal with these concerns, particularly the uncertain-

ty, incompleteness of the court scales and the difficulty in applying them. No lawyer in Western Australia can be confident that if his bill of costs is taxed there will not be a reduction of his costs upon taxation.

Copies of submissions made by APLA on costs addressed to the Attorney General, the Chief Justice of Western Australia, the Chief Judge of the District Court and the media are available by contacting Sukhwant Singh.

Criminal Injuries Compensation

A discussion paper has been issued on the initiation of the Attorney General into reforms in the area of criminal injury compensation and APLA will be making submissions in this regard. Members are invited to fax to Sukhwant Singh on 08 9421 1953 with suggestions for reform.

The challenges we face can be overcome with a strong team effort. I encourage WA members of APLA to play an active role in the challenges we face. Members interested in joining the APLA WA Committee should contact me as soon as possible. ■

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