

# The changing tide of plaintiff law in Victoria

Audrey Jamieson, Melbourne

*The fight to retain the common law rights of injured workers in Victoria is now well known to APLA members. We lost the battle in so much that access to the common law ceased to apply to victims of workplace related accidents from 12 November 1997. Workcover statutory benefits were also significantly reduced but some gains were made, the most significant being that workers injured before 12 November 1997 retain the right to pursue a common law claim (subject to a successful application for a serious injury certificate) for the length of the six year statutory limitation period or up to 31 December 2000, which ever is the lesser.*

Predictably, the Kennett Government is already making moves to further amend the *Transport Accident Act* to mirror recent *Accident Compensation Act* amendments by proposing the introduction of the use of the 4th edition of the *American Medical Association Guides to Permanent Impairment* which will without a doubt reduce victims' benefits in most instances. It will come as no surprise to anyone is the Government also announces an intention to abolish common law rights of transport accident victims.

This turbulent period of change in Victoria prompted the Victorian Branch to organise its inaugural State Conference which was held at Lorne on the Great Ocean Road on the week-end of the 8th, 9th and 10th of May 1998. The conference was called "Catch the Wave: The Changing Tide of Plaintiff Law in Victoria". The program featured a wide range of speakers with extensive experience and expertise in plaintiff law issues. Workcover developments, the procedural restrictions imposed on the remaining common law claims and the discretionary/mandatory requirements of the 4th Edition guides were dealt with. An insight into the resources and research required in mass tort litigation was provided through a presentation about the Stolen Generation

litigation. Transport accident injuries, Life Insurance Complaints Service, superannuation disability claims, medical negligence developments and practical tips in running a medical negligence claim all had sessions as well as occupier/public liability claims.

There were 86 participants of which 10 were new members. There were fourteen representatives from the Victorian Bar. The conference dinner attracted 118 people to hear keynote speaker Bernard Bongiorno, a distinguished barrister and former Director of Public Prosecutions in Victoria.

At the dinner we honoured two Victorians for their contribution to the campaign against the abolition of common law rights by presenting them with Civil Justice Awards. Geoff Provis, President of the Law Institute of Victoria worked relentlessly in his endeavours to save common law in a way that we have never seen the Law Institute perform before. His contribution was made without regard for his own professional position as a Partner in a defendant firm. Similarly, without regard for his own personal privacy Tim Darby,

an injured worker, presented his injuries to the public both through print and live media in an attempt to keep the issue on the public agenda. APLA considered that no two better people deserved the awards at our inaugural conference.

On the following morning a special session dealt with how APLA can become a more effective lobby group and Simon McGregor, Policy Manager, emphasised the need for membership to grow.

The Conference successfully brought together plaintiff lawyers into an environment where there was free exchange of information and was stimulating and worthwhile in adding value to our work as plaintiff lawyers - a difficult task in Victoria where plaintiff law is clearly undergoing a period of major change.

I would urge other states to hold their own conferences. ■

**Audrey Jamieson**, Associate at Maurice Blackburn, is the President of the Victorian Branch of APLA and a National Councillor. **Phone** 03 9345 2700, **fax** 03 9347 6284



L to R: Geoff Provis, Tim Darby, Audrey Jamieson, Bernard Bongiorno QC