Shock changes to Victorian TAC Scheme

John Voyage, Melbourne

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Public holidays have become a dangerous time for Victorian workers and users of Victorian roads. We have previously seen amendments to WorkCover legislation introduced on the eve of public holidays, without warning. This pattern was repeated by Parliament on Good Friday Eve, Thursday 9th April, 1998 with the unheralded introduction of the ***Transport Accident (Amendment) Bill.***

Without consulting the profession or the public, major changes to the scheme were passed through Parliament late at night. Clause 12 represents the clearest attack on victims of road trauma. Previously, any decision of the TAC can be the subject of a review to the Administrative Appeals Tribunal within 12 months of the claimant becoming aware of the decision. Furthermore that 12 month period can be extended in accordance with the Administrative Appeals Tribunal Act, as per *Bell v. Transport Accident Commission*.

The TAC argued that a 12 month time limit was more generous than the "normal" 28 days purportedly allowed for other matters of review at the Administrative Appeals Tribunal. However, in *Bell*, the Court was aware that there were more than 60 other enactments to which the 28 day period does not apply; the very point of the decision in *Bell* was that there is no "normal" period at the Administrative Appeals Tribunal.

In commending this particular paragraph the Victorian Treasurer provided the usual TAC half truths of statistics, showing an increase in the numbers of Bell Applications during the past 2 years. Part of the basis of that increase was gradual dissemination of the *Bell* decision throughout the legal profession and subsequent to clients.

Examples of cases which have required Bell Applications include cases where TAC has made unlawful decisions regarding entitlements of infants who were not capable of responding; a case where the TAC misled a young claimant as to whether the further surgery for which TAC had accepted responsibility would result in TAC deferring making a decision regarding impairment entitlement, and other examples of TAC overstepping its legislative power and failing to perform its statutory duty to pay compensation to persons entitled.

The very purpose of Bell type Applications was to give the Tribunal power to extend the normal 12 month time limit when doing so would be fair in all of the circumstances. The Government and TAC seem unhappy with such a concept.

Clause 12 also appears to be a dramatic amendment to loss of earning capacity benefits. The previously existing provisions permitted review of a claimant's entitlements to those benefits "at any time" at the request of the claimant. The amendments, however, will limit that entitlement to review to people who are actually receiving benefits. It will mean that people who are kicked off benefits without good reason may find themselves disentitled to benefits. For example a young brain injured person with such severe injuries as to entitle them to lifetime payments might receive an incorrect decision from TAC telling them that they have no entitlement to loss of earning capacity benefits. The situation before these amendments was that a review could be lodged at any time. Now it must be lodged within the 12 month time limit (see above) or else the entitlements to payments will be lost.

Clause 8 introduces the use of part of the fourth edition of the *AMA Guides to Evaluation of Permanent Impairment*. It specifically deletes chapter 15, which deals with assessing impairment caused by pain. One effect of this is that people suffering chronic pain, or having bad outcomes from surgery, will be disentitled from receiving an assessment of the kind originally tendered by the creators of the *Guides*.

TAC has apparently carried out duplicate assessments of more than 5,000 people comparing second edition and fourth edition of the Guides. It reached the conclusion that those with catastrophic injuries may be better off, but those with less than catastrophic injuries, being the very vast majority of victims of road trauma, would receive a lower assessment and consequently lower compensation.

The amendments also dictate the way that other injuries including hearing loss will be assessed. Furthermore it substitutes for chapter 14 (mental and behavioural disorders) a document said to have been created by a Victorian Medical Panel; for which members of the Panel deny existence. The Government says that this problem will be remedied by mid June.

Some of the proposed amendments are uncontroversial, clearing dead wood from the legislation. Clause 3 limits pharmacy expenses to those requested by a medical practitioner or dentist. It might in some cases result in an increase of costs to the TAC, requiring additional attendances on doctors in order to obtain, say, a prescription for Panadol. On the other hand it might result in many claimants choosing to pay for it themselves. Whether this is a valid amendment for audit purposes, or a cynical play on victims of road trauma, remains to be seen.

Finally, there is some good news. Clause 7 shows that the Government can occasionally listen to plaintiff lawyers, as it adopts an APLA recommendation for reform. A Victorian motorcyclist is for- ▶

bidden from obtaining a Learner's Permit until an approved rider training course has been completed. However, a person who holds neither a Learner's Permit nor a Licence has no entitlement to loss of earnings benefits from the TAC. The clause seeks to redress that anomaly so that a person injured whilst undertaking a cause of this kind is entitled to compensation. This was drawn to the Government's attention by plaintiff lawyers.

Despite regular meetings between a group of Victorian Motor Vehicle SIG members and the Victorian TAC, in the name of "liaison", we have once again seen the contemptuous manner in which the Victorian Government and the Victorian TAC deals with the rights of victims of trauma. ■

John Voyage, a Partner at Maurice Blakburn & Co, is the National Chair of the APLA Motor Vehicle SIG.
Phone 03 9345 2700, **fax** 03 9345 2738

Adelaide personal injury seminar

Over 40 APLA members met at the Stamford Grand in Glenelg on April 17 to participate in a seminar on personal injury litigation in South Australia. Outgoing APLA President Peter Semmler QC presented an overview of claims for damages in psychological injury cases which was followed by two panel discussions covering Workers Compensation and Motor Vehicle Litigation.

Both panels prompted wide-ranging discussion about the current state of play in these areas in South Australia. Of particular interest was the threat posed by the National Competition Policy agreement to the South Australian motor vehicle insurance scheme and the potential fronts of attack by ignorant policy makers in this area. This discussion has led to the creation of an APLA Motor Accident Commision Working Party to address these threats. (See Angela Bentley's article in this issue).

Members enjoyed the opportunity to meet each other and APLA National Council members and staff and to discuss the role which APLA can play in South Australia.

▲ *L to R:* Michael Sares, Ruth Carter, Stephen Lieschke, Angela Bentley and Peter Eriksen

◀ *L to R:* Gianna di Stefano, Michael Speck and Rukmi Sen at the SA Personal Injuries Seminar