ACTIVATE

Some APLA members advertise their services to the public, and others do not. This freedom of choice is important, for lawyers as well as the consumers of legal services. APLA believes that all lawyers should have the freedom to inform the community and attract business through advertising subject to APLA's code of conduct.

APLA requires that each of its members abide by its Code of Conduct. In part this includes:

Representations & Advertising

8. APLA members shall not personally or through an agent make representations of experience or specialist skills which they do not possess.
9. APLA members shall not knowingly make any statement, whether to a prospective or existing client, or otherwise which may give the client false expectations.
10. APLA members shall not engage in promotional activities that might reasonably be regarded:
    (a) As being false, misleading or deceptive;
    (b) As being vulgar, obscene or sensational;
    (c) As devaluing the public protection role of plaintiff lawyers;
    (d) As promoting litigation as a means of obtaining financial reward rather than fair compensation for an injury or loss sustained; or
    (e) As bringing the common law right to claim damages for injury or the adversarial system into disrepute;
    (f) As being likely to bring plaintiff lawyers or APLA into disrepute.

However, APLA is very concerned that the public's right to access legal services information has been severely restricted in New South Wales. The *Legal Profession Amendment (Advertising) Regulation* 2001 and *Workers Compensation (General) Amendment (Advertising) Regulation* 2001 have severely limited the rights of lawyers to advertise, and consequently the public's ability to make informed choices concerning legal services.

The NSW controls on advertising are unjustified. While the NSW government is concerned that lawyer advertising encourages a litigation culture and induces the making of false claims, these assertions are unsupported. The public benefit of having access to the legal system greatly outweighs any public detriment caused through advertising.

The need for the community to have access to the information usually

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found in lawyer advertising is of particular significance for those community members of moderate means. They do not have extensive use and knowledge of the legal system, and need to have easy access to that information should they so require. Most people do not have regular dealings with a lawyer, and may not know anyone who does.

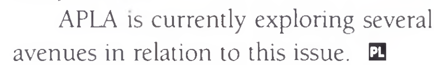
The recognition or identification of a legal right, the importance of seeking assistance, and access to competent lawyer are some of the important messages that the public gains from advertising by lawyers.

The NSW Regulations affect injured workers' access to information about their legal rights and affect legal consumers of conditional fee agreements. Infrequent consumers of legal services are now more distanced from an accessible legal system and legal representation.

Injured workers all too often find it difficult to obtain accurate information about their rights from their employer, from the insurer or from the WorkCover Authority. In fact, it is usually the defendant in a work injury case that advises the worker to go and see a lawyer for advice.

However, the NSW Regulations make it harder on consumers to identify the most appropriate lawyer for them. Lawyers who specialise in the area can provide the best information and dispel some of the myths that injured workers often hold about their entitlements. The NSW Regulations make access difficult for those people.

Legal services must be accessible, affordable and accountable to the community, if we are to have a justice system to benefit all Australians equally. APLA therefore opposes the restriction of advertising by lawyers in the way that the NSW Regulations operate. Access to the legal system should not be a luxury, and it should be readily accessible by every citizen.



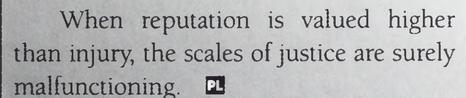
APLA is currently exploring several avenues in relation to this issue.

Dr Kerryn Phelps, President of the Australian Medical Association has discovered the value of accessing the civil courts for remedying a wrong.

A Supreme Court jury found that Dr Phelps was defamed in an article that featured in the Weekend Australian on 2 September 2000. For damage received to her reputation, Dr Phelps is entitled to compensation, and rightly so. Her access to compensation is unfettered. There is no minimum amount of damage she needs to prove and there is no limit to the amount of compensation she can claim. Her individual circumstances will be properly considered, and she will be compensated accordingly.

It is interesting to note that while Dr Phelps had unrestricted access to a remedy for the wrong done to her reputation, patients injured due to the negligence of medical practitioners in New South Wales are forced to jump hurdles of proving a minimum level of injury in order to access common law and then finding their amount of compensation restricted in some areas.

Now that Dr Phelps has experienced the value of access to the common law first hand, let us hope that she may not be so quick to recommend tort law reform in the future.



When reputation is valued higher than injury, the scales of justice are surely malfunctioning.

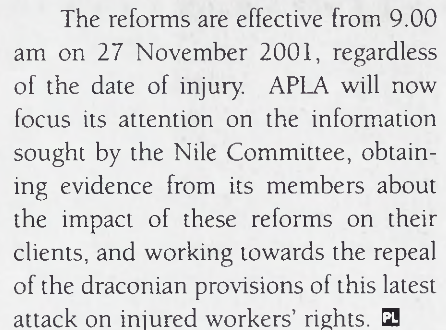
The Workers Compensation Legislation Further Amendment Bill 2001 (NSW) has been rushed through parliament by the NSW Government.

The Coalition announced that it would support the Government's legislation, ensuring that the Bill would pass through both Houses. However, it is to be noted that some members of the Cross Bench voiced strong opposition to the Government's reforms.

While a number of amendments were moved, only three survived the process. The date for approval of commutations of matters already in the system (i.e. where there were proceedings on foot in the court before 27 November) has been extended to 31 March 2002. This Bill and the June 2001 reforms are to be reviewed by 27 April 2003. Further, the Nile Committee of review has had its terms of reference extended to include oversight over this Bill. However, self-insurers are to be included under the reforms, despite an amendment moved by the Democrats to exclude them.

The casualties of this Bill are the injured workers of New South Wales. They will not be entitled to commute their benefits unless they can prove they have a permanent impairment of 15% or more. They must also have a current entitlement to weekly benefits and they must have exhausted their return-to-work options.

The threshold for access to common law damages is also 15%. However, damages at common law will be restricted to past and future wage loss. They will also lose their entitlement to expenses under the statutory scheme, such as medical expenses.



The reforms are effective from 9.00 am on 27 November 2001, regardless of the date of injury. APLA will now focus its attention on the information sought by the Nile Committee, obtaining evidence from its members about the impact of these reforms on their clients, and working towards the repeal of the draconian provisions of this latest attack on injured workers' rights.