

Governments take away rights, plaintiff lawyers left to explain

“Being at the coalface, APLA members are in a unique position.”



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We should all be concerned about the growing trend to abolish the rights of injured people around the country. Recently we have seen a number of legislative reforms restricting and sometimes removing the rights of injured people to access fair compensation.

The government's failure to provide a mechanism of adequate recompense for the injuries people suffer through the fault of others is not common knowledge. Ultimately it is left to APLA members to explain to the injured who seek their advice that they have limited, if any, access to fair compensation.

Being at the coalface, APLA members are in a unique position. On a daily basis members hear stories about how injury impacts on an injured person's activities of daily living, affects personal relationships and changes a person's social behaviour.

These are real stories that the general public, the media, and the politicians don't get to hear - stories about ordinary people often forced to cope with extraordinary situations, due to someone else's negligence.

No one expects to be injured. And no one who is injured expects that they will not be looked after. Telling people their rights to fair compensation have been taken away is a thankless task.

People's reactions can vary from disappointment to anger, but rarely is such bad news well received.

Plaintiff lawyers are also unpopular with the people they sue. There have been an unprecedented number of attacks on the legal profession, and plaintiff lawyers in particular this past year. Making ourselves unpopular with defendants however, is part of the job description. It does mean however, that the profile of the injured themselves will ultimately have more impact than the voice of the lawyers who represent them. It is the voice of your clients and their families, the people who are affected by the removal of rights to access fair compensation that can make a real impact on changing government policy.

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APLA remains committed to raising these issues on behalf of injured people and their lawyers. But APLA is only one voice. There are things you can do to make a difference.

We encourage you to recognise the emotional reaction of your clients at that

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first interview, and assist them in expressing their stories in writing, in an effort to bring about positive change to fair compensation rights in Australia.

To make a difference, we encourage you to recommend to your clients that they write to their local Member of Parliament about their experiences. Lists of Members are easily located on the Internet (see

<http://www.aec.gov.au/electorates/index.htm>).

We would also encourage you to speak out on these issues yourself, and perhaps even contact your local paper. It may be useful to write a letter to the editor in response to articles misrepresenting the facts about compensation entitlements, or the plight of the innocent injured victims. Representing the injured gives you a unique perspective, enabling you to draw on the experiences of your clients who have suffered injury in negligent circumstances.

Next time you hear comments on talk back radio that concern you, or misrepresentations of the legal profession, don't hesitate to contact the relevant radio station and put forward the

other side of the argument. Talk back radio is where allegations of lawyer greed and excessive damages awards build into stories picked up by the mainstream press and then blindly accepted as fact by the wider community. To assist you, APLA may be able to provide you with resource materials and statistics to back up statements on certain issues.

We also encourage you to share your stories with the APLA office. Let us know ahead of time if one of your cases is about to set a precedent or will result in a significant award, so that we can be prepared for the negative media that may flow from it.

Compensation is not about numbers, but about the damage to ordinary people's lives. Help us show the human side to these issues. If governments want to take away rights to fair compensation, we need to explain the issues to our clients, and also to the rest of the community.

If we don't have the courage to do these things, we are not effective in protecting the rights of injured people and making wrongdoers accountable. ■

PLAINTIFF

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\$17m payout for paralysed driver

By BRAD CLIFTON

A YOUNG woman left paralysed from the mouth down after her car skidded off a road and rolled down an embankment is expected to receive an Australian-record damages award of almost \$17 million.

Lisa Palmer, 22, had been licensed to drive for just three months when she crashed her Hyundai sedan near Bathurst in February 1997, suffering a "catastrophic injury".

Now 26, Ms Palmer is a tetraplegic, unable to move any portion of her body below mouth level and is reliant on a ventilator to breathe.

Yesterday, NSW Supreme Court Justice James Wood said blame for the tragedy rested equally with the local council responsible for the road where the accident occurred and the company that carried out resurfacing work at the site.

The judge found loose gravel spread on the road by the company caused Ms Palmer's car to skid on a bend.

He further found that a lack of warning

signs meant the young driver was unaware of the danger.

"There had been no brooming of the road surface to remove any gravel," Justice Wood said in a written judgment. "The sign posts warning of the work, its nature and dangers, were seriously inadequate."

‘Hopefully she can now get on with her life, which is a miserable one as you could imagine.’

— Solicitor Tim Abbott

Ms Palmer brought her compensation case against the Evans Shire Council, Pioneer Road Services Pty Ltd and the NSW Roads and Traffic Authority.

While Justice Wood found blame for the accident should be "shared equally" between the council and the company that did the work, Pioneer, he ruled there was no direct breach of duty on the part of the RTA, which

is the government authority with overall responsibility for the roadway.

"I am satisfied [Ms Palmer's] accident was due to serious inadequacies in relation to the site control and provision of signs in relation to the presence of gravel," Justice Wood said.

"The risk of an unwarned motorist who

recover control of the vehicle after it spun in the loose gravel.

Ms Palmer, who is reliant on 24 hour nursing care, is expected to receive between \$16 million and \$17 million damages when a final figure is decided on in the new year.

The bulk of the payment will go towards her future care.

Her solicitor Tim Abbott said Ms Palmer was "absolutely thrilled by the result".

"Hopefully she can now get on with her life, which is a miserable one as you could imagine," Mr Abbott said.

Ms Palmer, who is in a permanent relationship and hopes to become a mother, enjoyed an active life and was studying environmental science at the time of her accident.

Justice Wood said she had not "given in to her injury" and still enjoyed social outings and interaction.

"She maintains an interest in acquiring computer skills and in further educating herself through the TAFE college at Bathurst," the judge said.

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