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Managing Editor's note

We have all seen the sensational headlines in the newspapers about the 'litigation explosion', 'ambulance chasing lawyers who advertise no-win, no-pay' and 'spiralling insurance premiums'. In this edition we have published updates on APLA's response and in particular a report on APLA's public liability by Eva Scheerlinck, Public Affairs Manager and Pat Worthy, chair of the hard-working Public Liability Special Interest Group.

The High Court abolished the immunity of highway authorities for nonfeasance last year. As explained by Dr Morrison, highway cases are now decided according to the ordinary rules of negligence rather than categorising cases according to highly technical, artificial distinctions without sound policy justification, which often resulted in increased litigation due to uncertainty and unpredictable outcomes. As Dr Morrison points out, the abolition of the immunity and return to general principle does not mean that the floodgates of litigation have opened. According to general principles, if a duty of care is found, liability will only arise if the defendant is shown to have failed to take reasonable care in the circumstances. And 'reasonable minds can differ as to the limits of the duty'. This ability to decide cases according to the individual facts and circumstances of the case is one of the great virtues of the common law as it has developed in this country. Yet there have been calls for legislative intervention to restore the immunity, just as there have been calls for other legislation to contain public liability litigation.

Simon McGregor has contributed an interesting and informative analysis of recent developments in the law relating to liability for injuries sustained in and around licensed premises. He discusses not only negligence claims, but also legislative developments including the impact of recent legislation circumventing the effect of *Astley v Austrust* whereby it had been possible to avoid contributory negligence defences by concurrently pleading contract and negligence. This is particularly significant given the court's focus not only on the defendant's conduct but also on any failures by plaintiffs to exercise reasonable care for their own safety. Perhaps, as suggested by Chris Thomson, it may be prudent to consider

pleading an alternative trade practices action.

APLA has a new team, comprised of both familiar and new faces and we have included a profile of APLA staff in this edition so you can get to know them. At Plaintiff we farewell and acknowledge the good work of past editor Adam Flynn who has left us for the slopes of Switzerland to further his studies, and welcome new editor Lyndal Hayward.



TINA COCKBURN, QLD