

The cost of injury and change

Awave of change has overcome our nation's decision-makers. They appear compelled to reform laws on the back of a few sensationalist headlines and some catchy political bravado, but with little, if no, understanding of the flow-on effects. No one seems to be paying any attention to the financial cost of tort reform.

Injury costs money. By removing the right to sue for compensation, that cost does not disappear, it is merely redirected.

Restricting people's entitlement to claim compensation for negligently caused injury will mean that more injuries occur in the future, and the injured will need to rely on our social welfare system, as well as family and friends, to cover the costs that should be met by wrongdoers.

Governments seem to have forgotten about the cost-benefit of the ability to sue wrongdoers for negligence. Curtailing a person's right to sue only increases the burden on the taxpayer.

More often than not, injury results in a person requiring time off work and, possibly, a loved one sacrificing their job to care for the injured person.

This brings about immediate financial pressures on the injured person and their family. Most Australians have ongoing financial commitments that do not cease when injury occurs. Mortgages, car repayments and children – just to name



Eva Scheerlinck is APLA's Chief Executive Officer **PHONE** 02 9698 1700
EMAIL eva@apla.com.au

few. Not everyone has the benefit of an income protection policy. And if they do, their injury may not meet the criteria to allow them to make a claim under such a policy.

This means injured people must often rely on social security payments during recovery periods, on our public health system, and in some cases they may claim on privately held insurance policies.

When an injury is negligently caused and proven as against a third party, it is only fair that Centrelink be repaid any contributions it paid to the injured person for loss of income, that the public health system be repaid for its input, and that private health insurance or income protection insurance providers have their contributions refunded. After all, if someone else is responsible for causing the expense or loss, they should be responsible for the cost thereof. Not too many people would disagree with that.

However, recent legislative changes have caused a shift away from this sensible principle. Accountability for wrongdoing is no longer as important as discouraging claims. But the bad news for our Members of Parliament is that the Australian taxpayer - the voters - will need to pick up the tab.

Where previously an injured plaintiff may have been entitled to claim for lost earning capacity, expenses and pain and suffering resulting from the incident, they may not be able to under the new legislative provisions.

They may not be able to claim at all, or they may choose not to pursue a claim because the entitlements have been severely restricted and the exercise is no longer worthwhile. Indeed, they

may not find a lawyer willing to risk running the claim.

No matter what the reason for not pursuing a legitimate claim, the fact is that the cost of that injury will be transferred to the taxpayer.

There are very few empirical studies in Australia that examine this issue. However, APLA has warned governments of the cost-shifting eventuality that has so far been ignored.

But legislators around the country have reacted to a perceived crisis in a manner fitting of the tabloid press - without too much investigation.

Of course, another reason exists for why governments have been quick to jump on the tort reform bandwagon. Every time insurance premiums increase so does the government's tax revenue. In fact, taxes account for approximately 19% to 52% of premiums paid in this country, depending on the state you live in.

So there appear to be short-term benefits to introducing tort reform by creating a culture of fear of litigation, encouraging more people to take out insurance. It is also popular to bash up on lawyers and take away the civil rights of injured people so that a government can be seen to be dealing with a perceived insurance crisis. Any flow-on cost penalties to the public purse will not be seen for some time, let alone properly identified, making tort reform a cheap, popular and easy solution to a misunderstood market problem.

Let us hope that the reality of this cost-shifting and the inevitable increase in the number of injuries don't need to bite too hard before APLA's message is taken seriously. **PL**