

# The ALA's duty of care

By Mark Blumer



In 2003, Professor Peter Cane, in his article, *Reforming Tort Law in Australia: A Personal Perspective*,<sup>1</sup> described the participants in the tort reform debate as 'conservatives, radicals and moderates'. He said there were 'two species of conservatives – compensationists and economic rationalists'. He said: 'The leading representative of this species [compensationists] of conservative in Australia is the Australian Plaintiff Lawyers Association ('APLA').'

High praise indeed!

Since then, we have changed our name and widened our interest to include other fields of law, particularly crime and human rights law. We have been active in promoting individual human rights. We have contributed to the campaign in favour of a federal charter of rights. We have spoken out against the 'tough on crime' law and order auctions that regularly accompany state elections, mandatory sentencing, the bikie laws and many other human rights issues. Does that mean we are no longer 'the leading representative of this species of conservative in Australia'?

I don't think so.

All around the country we are now campaigning for the retention or re-introduction of common law rights for injured individuals. The battles going on now in Queensland (for the retention of common law rights in the workers' compensation system) and South Australia (for the re-introduction of rights in the workers' compensation system) are typical. That campaigning continues between and during elections in the states and territories.

At the national level, we face two major questions about common law – the National Disability Insurance Scheme (NDIS) and the proposed 'harmonisation' of workers' compensation systems.

Our informal first response to the proposed NDIS is that we recognise that there is a very large, unmet need for better care for the profoundly disabled. That need must be met. We say that the need should *not* be met by reducing the quality or quantity of care provided to those who obtain compensation through the tort system. Equality is not an aim we seek, if it means equally bad care for all the profoundly disabled.

In relation to the workers' compensation harmonisation process, our approach is similar: if we thought that a harmonised system would choose excellence as its guiding principle, we would not have a problem. However, we do not support seeking the lowest common denominator.

With both of these national questions, we seek out people and organisations of a similar mind (and others of a dissimilar mind) to see how to achieve a good outcome.

In an attempt to define ourselves, rather than being defined by our critics, at our meeting of 29 January 2010, your directors decided to put in writing a strategic summary of what

we represent as an organisation. I have set it out below:

## PURPOSE OF THE ALA

Ordinary people are at risk of unjust treatment by governments and corporations.

The Australian Lawyers Alliance is dedicated to the protection and promotion of justice, freedom and human rights.

## OBJECTIVE OF THE ALA

The objective of the ALA is to ensure that the Australian legal system provides justice. The ALA does this by helping its members to help those who seek justice, informing the public and influencing law and policy makers.

## GOALS OF THE ALA

1. Positive tort reform
2. Introduction of a Bill of Rights by 2019
3. Fairness in the criminal justice system
4. Education of members and the public
5. To be a respected and authoritative voice

Simple enough?

With these goals and this purpose, we will never lack work. Nor will we ever not need people to do that work. Our work now will determine how we are described in the future. ■

**Note:** 1 *Melbourne University Law Review*, Vol. 27 [2003], p649.

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