

# The ALA – more relevant than ever

By Anthony Kerin



**A**s I have travelled around the country to various ALA state conferences, it has become apparent to me that our organisation is alive and well. This is despite the threat of wide-ranging changes to various compensation laws around the country, either proposed, occurring or already in place.

This edition of *Precedent* is timely. The Civil Liability Acts have been in place in most jurisdictions now for about a decade. At the recent ALA QLD conference, Richard Douglas QC reviewed the past 10 years. He concluded that while the law had narrowed, making it harder in some areas to establish liability, many circumstances still give rise to liability and the right to damages. But as some states face a further round of what is essentially tort reform, as a result of a federal push to implement catastrophic no-fault schemes where they do not currently exist, there will definitely continue to be a role for lawyers advocating on behalf of injured people. The process will just be different.

What is of greater concern to me is the reduction in entitlements and further difficulties facing plaintiffs in accessing schemes, with gateways and thresholds that are arbitrary, unfair, capricious and ill-considered. These obstacles serve only to reduce entitlements, or channel funds elsewhere into government coffers at the expense of the injured.

This ulterior motive will invariably be denied, but it is a fairly naked example of political expediency triumphing over principle. We should be used to this by now. The traditional ways of protecting the injured and our civil rights have disappeared.

Over the past decade, Labor governments have instigated a raft of anti-association and confiscation laws masquerading as legitimate law and order measures, decimated Workcover entitlements in various states, and reduced or modified CTP rights and entitlements around the country. Governments (including Labor) have been responsible for robbing the injured of their rights, and the ALA needs to keep saying so, loudly.

Also at the QLD conference, Justice Keane of the High Court spoke about principles of advocacy. It was a frank, at times humorous, insight into an experienced judge's views as to how the art of persuasion should be exercised.

One key observation he made was that, as the years go by, the ability of judges to be innovative and essentially to apply principles that extend the boundaries of various concepts such as negligence is going to become more and more limited. The common law is gradually being eroded, modified or restricted as a result of statutory changes.

This means that the ALA and other legal bodies have become even more relevant. It would be easy in these times to go fishing! Times are tough. Governments are attempting to implement administrative systems that function without lawyers at all; by and large, that is certainly their objective. They will not, of course, be able to prevent our involvement. They never have and they never will. Lawyers remain the most resilient of professionals.

Just look at this edition of *Precedent*! Ten years ago, there were many who said that the ALA and personal injury lawyers would be things of the past.

On the contrary, we are still here, and still have a lot of work to do. We should remain constant, vigilant and strong in our membership of this very relevant organisation: our work is 'like wrestling a gorilla. You do not quit when you are tired, you quit when the gorilla is tired' (Robert Strauss).

Sure, there will be changes and any narrowing of the work base will have repercussions, if in fact that is what happens. Statutory schemes, however, have a habit of creating even more work. The real issue is that on top of suffering cuts to their rights, the injured will also often bear responsibility for the costs that are incurred to a much greater extent. ALA's members must be resilient, adaptable, and continue to adopt principled positions over and above political expediency and pragmatism, and be very vocal about it.

The articles in this edition show the vibrancy and relevance of the ALA's members and their work, despite the far-reaching and massively rights-diminishing legislation of recent years. I commend the authors – and those practitioners – who continue to uphold the values of this organisation. ■

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