

**tabling statement.** The Deputy Prime Minister and Attorney-General, The Hon Lionel Bowen, in his Tabling Statement said that the report was an important and timely study into the problems and social disruptions that are caused, not only to its victims, but to society as a whole, by the perpetration of violence within the domestic sphere.

He said that the report made a thorough assessment of the available material on the frequency and extent of such violence in our society. Mr Bowen said that the Minister for Territories had undertaken to have the question of establishing a domestic violence unit in the ACT considered as a matter of priority. The Commission, in recommending establishment of such a unit, proposed that it should provide advice, support and counselling both for the victim and the offender. It would also have responsibility for meeting the basic and immediate needs of the victim, including adequate health care, physical protection, accommodation and financial support.

Mr Bowen said that his Department was, as a matter of high priority, preparing a draft Ordinance which it hoped to have ready for his consideration by late April. He said that that Ordinance — the Domestic Violence Ordinance — would deal with matters of law reform raised by the Commission, including police powers of entry and of arrest without warrant in instances of domestic violence, and the introduction of domestic violence protection orders. Mr Bowen emphasised his desire to introduce the Ordinance as quickly as possible.

**national campaign.** The *Sunday Telegraph* of 16 March 1986 reported that Mr Bowen was to ask State Governments to cooperate in a national campaign against domestic violence, by toughening their laws in conjunction with federal action to toughen its own laws. The *Sunday Telegraph* article said that as well as legal changes there would be a national program involving community education campaigns on the costs of domestic violence

and its widespread incidence. The article said that the national program would emphasise that social change was needed as much as legal change to curtail domestic violence. It quoted government sources as saying that the full domestic violence policy would be released in a few months and would incorporate specific measures on child abuse.

### **lump sum compensation**

My man, I don't want justice, I want mercy.

Billy Hughes

**teaching values.** A Marist Brother who was severely injured in a motor traffic accident in New South Wales was in February refused compensation to cover professional disability on the basis that he did not receive a wage in his teaching position. Brother Patrick Donnelly had at the time of his accident been engaged full-time in teaching and sought to recover compensation for the value of his ability to carry out his full professional services. Master Sharp in the New South Wales Supreme Court ruled against Brother Donnelly in relation to that aspect of his claim on the basis that he was not remunerated for the performance of his teaching duties.

The issue is similar to one being considered by the Australian Law Reform Commission in a reference on action for loss of consortium. The Commission is considering the question of its replacement by a right to compensation for loss of capacity to perform unremunerated duties such as housework. The Commission's inquiries are in the context of the Australian Capital Territory. The final report is expected shortly. In Brother Donnelly's case, Master Sharp said that the case sought to be made out on his behalf was that his loss of earning capacity should be measured by its replacement cost, and that it was irrelevant to have regard to the fact that prior to the injury the plaintiff had disposed of that valuable asset by conferring its benefit on others with virtually no direct reward. It had been argued that his loss was in being rendered incapable of conferring the fruits of his labours wherever he wished, with or without

financial reward. However Master Sharp held that those submissions concerning economic loss failed. The only basis upon which he could succeed in relation to loss of capacity to teach was for loss of satisfaction in being unable to carry out his profession as adequately as before. There are suggestions that the plaintiff will appeal. (*Sydney Morning Herald*, 20 February 1986)

**a thing of the past.** Lump sum compensation for road accident victims may soon be a thing of the past in most Australian jurisdictions. Government Insurance Offices in New South Wales, Victoria and South Australia all suffered significant losses last year on third party compensation payments. In each of these jurisdictions proposals have been put forward to change the present system based on the law of negligence. The New South Wales Law Reform Commission published a report in October 1984 on *A Transport Accident Scheme for New South Wales* in which it recommended a no-fault transport accident scheme in place of existing common law rights. As to the form of compensation it recommended:

Compensation should generally be provided in a form which matches the losses sustained by accident victims. Thus compensation for loss of earning capacity should be paid on a periodic basis and the medical support and other services required by disabled people should be provided as the need arises. In two specific cases, compensation for death and compensation for permanent disability, a lump sum is appropriate. (NSWLRC 43, para 5.88).

**cost: a catalyst.** The main catalyst for change in New South Wales and in other States has however been the cost to the government of running third party compensation schemes. In New South Wales the legal profession has become actively involved in lobbying the government to maintain the current system. As a result of rumours that this sort of change was imminent and that it may be partially retrospective, the Law Society in New South Wales placed newspaper advertisements urging solicitors to file statements

of claim for injury compensation immediately. For its part the New South Wales Bar Association in a notice to all barristers advised them to settle statements of claim or advise on the commencement of action 'as a matter of extreme urgency'. On the day that the advertisement appeared and the notice was issued the New South Wales Supreme and District Courts were flooded with claims. It was reported that the Supreme Court Registry received over 500 claims on the one day. The rush to file claims has continued despite the fact that the government has yet to make any announcement as to its intentions. An almost identical situation occurred in Victoria in late February when the Law Institute made public announcements that changes to third party compensation were imminent and that 1 March was the likely cut-off date for legal actions to be launched. The Victorian Government denied this and accused the Law Institute of 'scaremongering'.

**regular payments.** The principal option being considered by the New South Wales Government in its efforts to reduce the level of compensation payments is to limit large lump sum payments to permanently injured road victims in favour of regular payments for the life of the victim or until the victim recovers. It has also been suggested that fixed maximum payments and periodic payments for specific injuries could also be introduced.

FJ Gormley, QC a member of the Accident Compensation Committee of the New South Wales Bar Association in a letter dated 13 March to the *Sydney Morning Herald* claimed three reasons for the deficit in funds available to maintain the current compensation scheme. These were:

- The Government's failure to set an adequate premium for the third-party personal-injury scheme.
- The change by the Government in 1984 of the funding of the scheme from being fully funded, as had existed since 1937, to a 'pay-as-you-go' scheme.

- Lack of tightness in the day-to-day administration of compensation claims, resulting in over-generous settlements and failure to limit the fraudulent claims.

He further pointed out:

the Bar Association has advised the Attorney-General and the Minister for Transport that it can see no justification for reducing the rights of injured citizens to compensation when the problem that has arisen results from curable deficiencies in administration and funding.

In response to this WJ Jocelyn, Managing Director of the GIO, in a letter published in the *Sydney Morning Herald* on 21 March, argued that the most important problem in the current third party scheme was that 'the cost of benefits has been rising faster than either wage inflation or consumer prices'. He suggested that changing community standards was the reason for this and that both 'the scope and amount of compensation had been increased as lawyers had been able to convince courts that such increases were justified'. In his assessment the two major factors behind the current plight of the third party scheme are

the skill with which lawyers prepare and present such claims; and the bias towards the claimant which the community expects and which the courts enforce.

He also pointed out that a significant increase in premiums would be required in order to make up the short fall.

If there were an immediate 50% increase, with annual increases of about 20%, then the fund would be stabilised. Alternatively, annual increases of about 27.5% over five to seven years would be required before increases could be reduced to an underlying rate of about 20%.

The Law Society has argued in support of this option. It is very much against depriving persons of their compensation rights.

But the crisis in third party compensation is not limited to New South Wales. In South Australia the Government Insurance Commission has recommended:

- a ceiling of \$60 000 on lump sum payments for economic loss and pain and suffering;
- annual payments rather than lump sum awards (eg compensation awards of \$100 000 or more would be paid on an annual basis rather than as a lump sum).

The Law Institute in Victoria has proposed:

- compensation for minor non-demonstrable injuries (sprain and strains) should be abolished.

It has been estimated in Victoria that for the last three years claims within this category have jumped by 49%. Some Melbourne law firms have taken the step of placing newspaper advertisements to encourage persons injured in motor vehicle accidents to seek legal advice about commencing court action as their rights to sue may be abolished.

No firm proposals have been put forward in any of these jurisdictions but it seems that in the not too distant future some changes will be made. Large increases in third party premiums will not be popular and as a consequence governments are looking for ways to reduce the growth in compensation payments in order to resolve a dilemma.

## **law reform and resistance to change**

Everyone thinks of changing humanity and nobody thinks of changing himself.

Leo Tolstoy

*the church and slavery.* The recently appointed Chairman of the New South Wales Law Reform Commission, Mr Keith Mason QC, gave a speech touching on these matters to the University of New South Wales Law Faculty on 18 March 1986. Mr Mason noted