

# WESTERN AUSTRALIAN STATE CONFERENCE

By Raoul Cywicki

**H**eld at the Hyatt Regency Hotel in Perth on 31 August 2007, the conference was attended by more than 50 delegates, speakers and representatives from the conference sponsors – the major conference sponsor, Perpetual, and the conference partners, Ability One and Impact Capital.

The conference papers were all of a high calibre and covered a diversity of topics that reflect the broadening of the Alliance's focus from personal injuries law. National president, Ian Brown, gave the keynote address, which described how private employers are availing themselves of Comcare. The thrust of his paper was that the Comcare scheme is not the right model for either employer or employee, and that the need to find the right balance between the commercial interests of the insurer and the compensation requirements of the worker require co-operation and mutual trust between plaintiff lawyers and insurers.

Michael Corboy SC provided a clear and precise exposition of the High Court's rationale in the landmark case of *CSR v Eddy*, as well as a précis of recent cases in WA concerning damages – an indispensable summary for those practising PI law.

Mark Herron provided a useful guide as to the effects of the *Civil Liabilities Act 2002* on public liability claims. While the Act came into operation in November 2002, very few cases have as yet been decided, making the Act's operation very much uncharted territory.

In his presentation, Michael Gething, principal registrar of the district court of Western Australia, discussed the importance of mediation in dispute resolution from both the litigant's and court's perspective. Drawing on his experience as a seasoned mediator, Mr Gething described the kinds of tools that could be used by lawyers to bring about a negotiated settlement.

After lunch, Tom Percy QC shared his experiences as a leading criminal barrister in terms of successfully cross-examining expert witnesses, translating what is a difficult and intimidating experience for most barristers into a systematic and logical process.

Robbin Napper, a highly experienced forensic investigator, provided a fascinating and amusing insight into forensic

science, drawing on his extensive experiences to illustrate the importance of contamination prevention in a proper forensic investigation.

Brian Nugawela's helpful paper on 50 recent workers' compensation cases usefully divided them into six major categories: good practice, good news, causation/performance dichotomy, issue estoppel, the Nisbet/McCann dichotomy, and legislative reform.

Peter Quinlan gave a most interesting exposition of the application of the legal model of causation to various factual scenarios. With reference to cases concerning mesotelioma, he demonstrated how the courts go through a tortuous process in deciding questions of causation.

Winding up the conference, Chris Shanahan SC's paper on the practical application of legal professional privilege examined the three areas of privilege – advice privilege, litigation privilege and third party privilege.

The conference concluded with the presentation over drinks of the WA Civil Justice Awards to Tom Percy QC and Jonathan Davies. The third recipient, Malcolm McCusker QC, was unable to attend, and his award was received on his behalf by Mr Davies. Mr McCusker had, however, sent a message to the Alliance graciously accepting the award, poignantly noting that he looked forward to the day when a prosecutor received such an award. ■

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WA Civil Justice Award winners, Jonatha Davies and Tom Percy QC



(L to R) Grant White, Ability One, Clara Davies, the Alliance's National President-Elect, and Lian Hall, Bradford & Co