

FAIR and FUNDED

By Genevieve Henderson



Closely following the devastating reforms of workers' compensation laws in NSW, the NSW government has turned its attention to the motor accidents compensation scheme. Reform is also under consideration in other states.

Those of us who are personal injury lawyers are proud to act as advocates for the injured who, as Anthony Kerin rightly reminds us in this edition's president's page, should be at the centre of any motor accident compensation scheme with deterrence, justice, compensation for loss and improved safety as fundamental guiding principles.

There is, of course, a tension. Any compensation scheme must not only be fair, but must also be financially sustainable. Different compensation schemes across Australia deal with these objectives in different ways.

This edition of *Precedent* explores a number of the existing compensation schemes in Australia and New Zealand, and summarises the changes currently on the table in South Australia.

The *New South Wales Workers' Compensation Legislation Amendment Act 2012* drastically reduced workers' benefits and went much further than any involved in the consultation process, such as it was, had anticipated. Kasarne Robinson, in her article "Motor Accidents" in the Workplace, urges plaintiff lawyers to actively explore alternative rights under the motor accident laws that may be available to injured workers, and gives practical guidance as to when the MACA can be engaged to ameliorate the harsher aspects of the workers' compensation reforms in NSW.

Andrew Stone, in his article 'What Insurers Don't Understand About Contributory Negligence', clearly articulates the principles that underpin the concept of contributory negligence. He states: 'The enduring statement of principle is that the making of an apportionment as between a plaintiff and a defendant for the respective share of responsibility involves a comparative judgement, both of the relative culpability of the parties and the causal potency of their respective negligent acts.' Andrew mounts a powerful argument for the logic and inherent justice of this balancing of rights and responsibilities between the different players in a motor accident, as well as giving practical examples and guidance on a subject that must necessarily, always, in the end, turn on the facts.

Practical guidance and legal analysis is provided by Michael Horvath and Greg Lauritsen-Damm in their joint article dealing with liability issues in single vehicle accidents – an interesting and difficult area.

The articles that follow illustrate how a number of different jurisdictions have

dealt with striking the balance between fair compensation and a financially viable compensation scheme.

Emily Anderson, in her article 'Doing Things Differently: The Victorian Transport Accident Commission Protocols', gives a passionate and well-argued critique of what can be done when all stakeholders work together and in the absence of legislative compulsion. She states: 'The TAC protocols are an example of a non-binding dispute resolution process which, despite not being enforced by legislation, has seen a high level of participation good faith, negotiation and resolution.'

Patrick Boylen details the extensive changes proposed in South Australia. Graham Droppert and Guy Stubbs look at the Western Australian position. Emma White and John Green describe the Tasmanian hybrid compensation scheme – yet another model.

In 'The New Zealand No-Fault Accident Compensation Scheme', Simon Morrison critiques the New Zealand experience and debunks some of the myths around the success or otherwise of that scheme.

And for those who would like to deal with what is, rather than get caught up with what might be, Chris Hall provides practical guidance in engaging a vehicle collision expert in those jurisdictions where liability is still relevant to the consideration of entitlements.

This edition of *Precedent* provides a great deal of information and alternative ways of dealing with the same basic proposition – providing just compensation within a financially viable scheme. The 'road ahead' for motor vehicle accident compensation law in NSW and elsewhere in Australia is unknown. Sadly, the recent experience in the workers' compensation arena shows us that meaningful consultation and engagement with all stakeholders is unlikely.

My strong hope is that in the 'avalanche of change' that is happening around the country, the needs of those injured in motor vehicle accidents will be kept front and centre. ■

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