

to good practice, which emphasised the importance of effective communication.

His Honour, Mr Justice Gleeson, at the launch of the report, said: "In 1995, few people would be surprised that consumers of professional services are becoming increasingly insistent upon better communication with the providers of these services. This survey, however, provides a very useful reminder of that."

If any members would like further information, they can contact the Civil Justice Research Centre on (02) 290 3520.

### **Sexual Exploitation by Health Professionals**

Last year APLA held a very successful seminar on exploitation by health professionals. APLA has been notified that there is to be a further conference on this topic

**1st Australian and New Zealand Conference on Sexual Exploitation by Health Professionals, Psychotherapists and Clergy.**

**12th - 14th April 1996  
Holme Building, University of Sydney**

The organisers of the conference are currently calling for papers. Speakers confirmed to date are:

**Rev. Patricia Allen (NZ)  
Dr Steven Faux RACGP  
Rev. Marie Fortune (USA)  
Ellen Luepker, (USA) M.S.W.L.P  
Neil Ormerod, Theologian  
Patrick Parkinson, Assoc. Prof Law  
Dr Carolyn Quadrio, Psychiatrist  
Merilyn Walton, Comm. H.C.C.C (NSW)  
Gary Schoener (U.S.A), Psychologist**

If you are interested in further information or to be placed on the mailing list you should write to:

**CAHPACA (Committee Against Health Professional and Clergy Abuse) PO Box 674  
Rozelle NSW 2039**

## **Aircraft Passengers To Get Mandatory Insurance Scheme**

**Peter Carter, Qld**

A third party insurance scheme of sorts is proposed for all commercial aircraft (airline, commuter and general aviation) passengers under the *Transport Legislation Amendment Bill* (No. 2) 1995 which was introduced into the Senate on 29 March.

### **Background**

In terms of intra-national carriage a strict liability regime with a damages cap operates throughout Australia pursuant to the *Civil Aviation (Carriers Liability) Act 1959*. This Act deals with "commercial" air transport between States. Similar legislation applies in each State in respect of intrastate commercial air transport. The state legislation mirrors the federal act.

Commercial air transport is specifically exempted from the operation of the *Insurance Contracts Act 1984*.

Over the last three years the damages ceiling for claims for personal injuries or death has been progressively increased from \$100,000 to \$180,000 and lastly, as from 18 October 1994, to \$500,000.

Recent commuter airline accidents have highlighted the need for insurance reforms for the better protection of the travelling consumer.

In the debate over the extent of the required reforms, APLA's position was that, as with international carriage, the damages cap should not apply in cases of "wilful misconduct" and that the *Insurance Contracts Act* exemption should be removed.

### **Domestic Cover**

The Bill adopts the \$500,000 limit in respect of domestic carriage which was introduced by regulation in October 1994. More significantly however, the Bill proposes to make personal injury liability insurance mandatory for commercial operators. Operators will be required to provide



evidence of compliance with the insurance obligations to the Civil Aviation Safety Authority (CASA) and commercial carriage, which is not subject to an "acceptable contract of insurance", constitutes a criminal offence punishable by imprisonment for a period up to two years.

New provisions will be introduced into the *Civil Aviation (Carriers' Liability) Act* to prevent insurers avoiding passenger claims on the grounds of:-

1. any warranty or exclusion in the contract of insurance.
2. any breach of the policy by the carrier.
3. any breach of an aviation safety requirement.
4. as a result of the financial condition or insolvency of the operator.

Notwithstanding these significant gains to consumers, proposed s41G of the Act reserves to the insurer the right to cancel the policy. Further, there is still some scope for exemptions being granted to insurers by regulation.

APLA supports the benefits to the travelling public which will follow from the enactment of these changes, but has submitted that the legislation ought not to allow the insurer's right to cancel the policy as proposed in s41G to dilute other provisions of the legislation which go to make passenger claims substantially non-voidable.

### International Carriage

The Bill also addresses liability limits for international carriage to and from Australia.

Currently a mish mash of rules apply and the liability regime applicable in any particular case depends on the ticket and the country of its issue. Some countries, most notably Japan provide for unlimited liability. Australia as a party to the Warsaw Conventions attracts strict liability and a damages ceiling for tickets issued here. There is unlimited liability where "wilful misconduct" is shown.

Australia has attempted to increase the Warsaw limit and in 1991 joined with most other nations in signing the "Montreal Protocols" which increased

the limits to 100,000SDRs (approx \$200,000).

The United States, however, regards all the Warsaw instruments and Montreal Protocols as providing inadequate compensation and has refused to ratify the Montreal Protocols resulting in them not yet coming into force among the other signatories. In fact, the United States filed a denunciation of the Warsaw Convention in 1965 due to the low limits of liability created by the Convention.

The new Bill seeks to impose liability limits for personal to 260,000SDRs (approx \$500,000.00) in respect of all operating internationally into and out of Australia.

This will be a significant improvement for the Australian consumer but those travelling abroad other than "to or from Australia" will not necessarily get the benefits of the extended liability for that part of their carriage.

A meeting is to be held by all international carriers in the US in June. US anti-trust exemption has been granted for the meeting which will endeavour to formulate a voluntary agreement among all international carriers in respect of liability limits to overcome the hotch potch of different regimes which prevail among different countries, different carriers and different routes.

## ATTENTION MEMBERS

Have you been involved in a case recently which other APLA members may find useful or interesting.

If the answer is YES please write it down and send it to the Update. We **NEED** short case notes as well as articles on current issues effecting plaintiff lawyers.

Please call Anne Purcell on  
(02) 262 6960  
to discuss length and type specifications.