



# Climbing into their skin

By Richard Faulks

**A**s lawyers, the greatest service we can perform is to listen to those we act for or come across in our work. Where appropriate, we need to speak out about the things they tell us.

Too often the political debate is about numbers, profit margins, premiums, quotas and government budgets. Too rarely is there discussion about the people who are most affected by new laws or government decisions. As the famous fictional lawyer, Atticus Finch, said in *To Kill A Mocking Bird*; 'You can never really understand a person until you consider things from (their) point-of-view – until you climb into (their) skin and walk around in it.' What a pity our political leaders pay so little attention to such a notion.

With QBE announcing a 43% increase in profits (ABC News Online – 17 August 2005) and other insurers banking similar profits, and with the number of civil claims in our courts dropping by 43,000 across Australia over the last three years (Chris Merritt, *The Australian* – 15 September 2005), it is time to focus squarely on the injured people who are losing out.

The case studies we've gathered show that many seriously injured people suffer because of what NSW Chief Justice, Jim Spigelman, has described as restrictions that are 'not principled'. As he recently said, "There is an active debate in Australia as to whether or not the statutory changes have gone too far.

Those changes occurred without a full appreciation of the extent to which judicial attitudes had already changed and were changing. A number of persons, including myself, have indicated that, in various respects, the statutory changes have gone too far" (14th Commonwealth Law Conference – 14 September 2005). Indeed they have!

Politicians and policymakers should put themselves in the place of Susan Harris, who suffered serious injury in a head-on collision in NSW, when seven months pregnant, and as a result lost her unborn son. As the arbitrary AMA guides do not recognise such a loss, she is not entitled to any payment for her considerable pain and suffering.

Another example is Dean Newton, who had a very bad fall at work where there was no safety equipment. He suffered a fractured hip, smashed wrists, and other injuries. He will require a hip replacement in the future, but will receive no payment for his pain and suffering under Tasmanian law because he does not meet the impairment threshold. Ironically, if he ignored his doctors' advice and had his hip replaced now, rather than later, he would automatically meet the threshold. How can that be fair?

It is not only those suffering personal injury who have lost their rights. The rush to pass anti-terrorism laws has left in tatters the long-standing rights of those accused of criminal acts – let alone those who are merely 'suspected'.

As Malcolm Fraser said (16 August 2005), "The new laws permit governments to detain someone while not even being regarded as a suspect ... If you are detained because ASIO think you know something – not because they think you are guilty – you're not allowed to make a phonecall, you're not allowed to ring up a lawyer ... you're not allowed outside contact."

How would our politicians feel if they were arrested and detained for 14 days without charge, merely on suspicion that they may know something? As I heard a caller say on a recent radio talkback show, a loss of 14 days from someone's life is a major loss, enough to jeopardise the welfare of a family or the employment of the person detained. Jon Stanhope's article in this edition of *Precedent* analyses the many problems with this legislation.

We need to restore the balance. We need all concerned to put themselves in the 'skins' of accident victims, those suffering workplace diseases, the mentally ill, those detained on suspicion, and many others, and move to restore important rights that have so readily been removed despite being so fundamental to our way of life. ■

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