

# Medical Indemnity Forum

## 24<sup>th</sup> August



# Tort Law Reform - A Defendant Lawyer's Perspective

**Kerrie Chambers**

## Terms of Reference

“...examine a method for the reform of the common law with the objective of limiting liability and quantum of damages arising from personal injury and death...”

# Supreme Court of NSW

2001 2002 2003 2004 2005 2006 2007  
ytd

---

COMMON LAW  
DIVISION – CIVIL

---

**Professional  
Negligence List**

Filings 2	259	111	101	117	114	142	67 (134)
-----------	-----	-----	-----	-----	-----	-----	-------------

“The pendulum of negligence is constantly in motion. Although there have been times when its movement has been excessively rapid, it has generally moved slowly. I suspect that it is moving towards the advantage of plaintiffs again, albeit pretty slowly”.

(Ipp J, 30 March 2007)

## **Standard of Care for Professionals**

A professional does not incur a liability in negligence arising from the provision of a professional service if it is established that the professional acted in a manner that was widely accepted in Australia by peer professional opinion as competent professional practice. (NSW s.50)

# Limitation Period for Personal Injury Actions

## Discoverability

- the fact that the injury or death concerned has occurred,
- the fact that the injury or death was caused by the **fault** of the defendant,”
- in the case of injury, the fact that the injury was sufficiently serious to justify the bringing of an action on the cause of action.

## Causation and Warnings

If it is relevant to the determination of factual causation to determine what the person who suffered harm would have done if the negligent person had not been negligent:

Any statement made by the person after suffering the harm about what he...would have done is inadmissible except to the extent that the statement is against his...interest