

Courts look to future for life expectancy

Zhang and ORS v Golden Eagle International Trading Pty Ltd [2006] NSWCA 25

By Andrew Stone

For the average citizen (leaving aside melancholic Danish princes), issues of mortality and the span of time we have before we shuffle off this mortal coil are rarely at the forefront of our minds. There is little joy in contemplating how long one has left to live.

However, for a personal injury lawyer, a client's potential life expectancy is a critical issue. Claims for future treatment expenses and future paid and unpaid care requirements are directly linked to life expectancy.

There are two methods of calculating life expectancy. The first is by reference to 'historic' tables which calculate the life expectancy of a person based on past mortality rates.

The 'prospective' life table calculates future life expectancy by adjusting past mortality rates to take into account the historically determined rate of improving life expectancy and projecting a continuation in such improvements on to future life expectancy.

The Australian Bureau of Statistics prepares tables of both historic and prospective life expectancy. Clearly the prospective life expectancy approach (taking into account potential future improvements in longevity) will yield higher figures than the historic tables.

Traditionally courts have applied the historic life expectancy tables.¹ However, in *Zhang v Golden Eagle International Trading Pty Ltd and Ors* [2006] NSWCA 25, the NSW Court of Appeal endorsed the prospective life tables as

being the most accurate form of measurement of likely future life expectancy.

Justice Basten (with whom Justices Ipp and McColl concurred) found that the prospective life tables are themselves soundly based on historically determined rates of improving life expectancy. Inasmuch as the prospective tables provided a more accurate assessment of likely future life expectancy, they were to be preferred. Justice Basten concluded:

'In my view it is appropriate for the courts to make their estimations on the basis of the best information available: the projected tables would appear to be a more accurate assessment of future trends than the historic trends.'²

It is worth noting that in the case in question, the increase in life expectancy (being the difference between the two tables) was 5.6 years. There is no reason as to why the NSW Court of Appeal approach should not be adopted by courts Australia-wide. ■

Notes: 1 See Studdert J in *Beck v State of New South Wales* [2001] NSWSC 278 at para 132. 2 At para 55.

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