

Major claims and catastrophic injuries

By Anthony Scarcella

Lawyers involved in major claims and/or catastrophic injury claims require not only the necessary legal expertise for such cases but a sophisticated methodical approach with attention to detail, empathy, patience and financial and psychological stamina. The diversity of expert evidence required in any one case can be extensive. The paper trail, including electronically stored information, which arises from discovery can slow a case down and bury any 'silver bullet'. Our courts are endeavouring to case manage their way through the complexities with varying degrees of success. We have the appointment of joint experts and we have the 'hot tubbing' of experts. Even so, much depends upon the parties' legal representatives focusing on the real issues in dispute early in the proceedings. Easier said than done in an adversarial system, because it takes two to tango and often more than two!

This edition of *Precedent* focuses on major claims and catastrophic injuries. The articles and case notes highlight a variety of complex issues encountered by lawyers acting in such claims.

Associate Professor Michael Legg takes us through the US, UK and Australian experiences with complex civil litigation, highlighting their causes and the importance of identifying such cases at an early stage in his article *Complexity in Civil Litigation*.

Tim Tobin SC provides an insight into the bushfire class actions and an update as to their progress. He also

provides a lucid overview of the nature of a class action in Victoria and its advantages and disadvantages.

David Hirsch examines three strategies typically advanced by doctors in their defence of cerebral palsy claims and provides guidance on how to deal with them. Vicki Holmes provides a case note relating to advance payment in a cerebral palsy claim.

How to assess a loss of earning capacity in a seriously injured child plaintiff is covered by Jeremy Wiltshire. Various approaches to assessment are discussed, together with the child's circumstances relevant to the assessment of notional earning capacity. The issues of indexation and discounts for contingencies are also dealt with.

Sasha Manova sets out the key considerations and recent trends in assessing damages in catastrophic injury claims. The relevant heads of damage are reviewed followed by a focus on life expectancy. The key issue of life expectancy and the current thinking in relation to it is addressed by Anna Walsh. Four cases are referred to with discussion of the approaches of the various experts in those cases, together with the court's assessment of the evidence and its findings in each.

In her article, *Future Care: At Whose Expense?*, Jane Burns highlights the day-to-day problems faced by those who are in direct receipt of home nursing services. The duties of nursing care are explained and



the qualifications of nursing staff in Australia and each category of nurse are identified.

Tanya Segelov covers the issues of foreseeability, breach of duty of care, causation and damages of persons who have contracted malignant asbestos disease as a result of short-term and/or low-level exposure to asbestos in the home or workplace, in *'Third-Wave' Asbestos Cases*.

Dr Andrew Morrison RFD SC refers the reader to recent authority on the method of calculation of fund management.

Bill Madden summarises the damages issues regarding the costs of raising a child argued in a recent wrongful birth case, *Waller v James*, in which judgment is pending.

Paul Byrne provides a case note on *Williams v Twynam Agricultural Group Pty Limited & Anor*.

I highly commend this edition of *Precedent* to readers. ■

Anthony Scarcella is a Law Society of NSW accredited specialist in personal injury law and has been practising as a solicitor in NSW since 1976. He has been a member of the ALA since 1997; a member of the NSW Branch Committee since 2003, and is a past Branch President and past NSW Director on National Council.

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