Quinlan Miller & Treston Lawyers

Kriz V King & Anor: Care and Assistance Entitlements under the CLA

On 15 September 2006 the Queensland Court of Appeal handed down its decision in the matter of Kriz v King & Anor [2006] QCA 351. The court had to consider the interpretation that ought to be given to the gratuitous care provision (section 59) of the Civil Liability Act 2003.

Section 59(1)(c) of the Civil Liability Act 2003 placed on necessary gratuitous services arising as a consequence of the injury a requirement that they ought not be awarded unless " the services are provided, or are to be provided for at least 6 hours per week; and for at least 6 months. "

The court considered that the term gratuitous services was taken to mean the services particularised at common law within the decision Griffiths v Kerkemeyer. The court also took the view that section 59 of CLA modified and restricted the common law entitlement to Griffiths v Kerkemeyer damages and did not provide a separate statutory entitlement to recover for care and assistance provided to an injured Plaintiff.

It was argued by the appellant insurer that section 59 of CLA required the services to be provided for at all times for at least 6 hours per week. That is, that the services had to be provided for a period of 6 hours per week and the duration of those services must continue for a minimum period of 6 months. The respondent argued section 59 was a mere threshold provision requiring services to be supplied for 6 hours per week for 6 months in order for their to be an entitlement to recover care and assistance, and once the threshold was reached either before the date of the assessment or sometime in the future, the Plaintiff became eligible to recover care and assistance for all services provided.

The court considered either interpretation was open to it and the parliamentary second reading speech and explanatory notes provided no aid to deciphering parliaments intention. As the intention of parliament by the introduction of Section 59 was to in some way fetter the right of an individual to seek compensation, the court considered

Ph: (07) 3223 6400
Fx: (07) 3223 6444

www.qmtlaw.com.au
qmt@qmtlaw.com.au

GPO Box 2500
Brisbane Qld 4001

Level 5
179 Turbot Street
Brisbane Qld 4000

it was bound by authority of the High Court of Australia. Where a section of legislation purports to limit a common law right it should clearly and unambiguously express the limitation on the right. In the case before it the Court of Appeal considered the interpretation that ought to be afforded to Section 59 was that which least diminished the Plaintiff's common law rights. The court therefore held that section 59(1)(c) requires that once services are provided for at least 6 hours for 6 months a claim for care is maintainable notwithstanding the services provided may thereafter drop below 6 hours of care per week.

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