

Modules

1. INTRODUCTION TO HEALTH AND MEDICAL LAW
2. CONSENT TO MEDICAL TREATMENT
3. PROFESSIONAL LIABILITY
4. REPRODUCTION
5. WITHDRAWAL OF TREATMENT, END OF LIFE DECISION-MAKING, AND ASSISTED DYING

(b) if no such rate is determined by the regulations—the relevant interest rate as at the date of determination of the damages.

(4) For the purposes of subsection (3), the relevant interest rate is the rate representing the Commonwealth Government 10-year benchmark bond rate as published by the Reserve Bank of Australia in the Reserve Bank of Australia Bulletin (however described) and as applying—

(a) on the first business day of January of each year (in which case the rate is to apply as the relevant interest rate for the period from 1 March until 31 August of that year), or

(b) on the first business day of July of each year (in which case the rate is to apply as the relevant interest rate for the period from 1 September of that year until the last day of February of the following year).

(5) Nothing in this section affects the payment of interest on a debt under a judgment or order of a court.

(e) Damages for wrongful birth claims

(i) **(1)** Application: For damages for birth of child, whether claim is made in tort or contract [CLA s 70(1)]

(A) Does NOT apply to child's claim for personal injury suffered pre-natally, or during birth [CLA s 70(2)]

i.e. not concerned with pre-natal injury claims

(ii) Limitation on damages [CLA s 71]

(A) No damages awarded for:

(1) Costs associated with rearing/maintaining the child [s 71(1)(a)]
e.g. feeding/clothing child

(2) Parent's lost earnings while rearing/maintaining child [s 71(1)(b)]

(iii) Claimable costs from wrongful birth (i.e. not excluded from [s 71])

(A) Can claim medical costs related to birth

(B) Additional costs associated with raising a child who has a disability [s 71(2)]

i.e. the costs that arise from that disability

e.g. blindness-related additional costs of rearing and maintaining such a child that would NOT arise for a child that would see

CLA s 70 Application of Part

(1) This Part applies to any claim for damages in civil proceedings for the birth of a child, regardless of whether that claim is made in tort, in contract, under statute or otherwise.

(2) This Part does not apply to any claim for damages by a child in civil proceedings for personal injury (within the meaning of Part 1A) sustained by the child pre-natally or during birth.

(3) This Part does not apply to civil liability that is excluded from the operation of this Part by s 3B but, despite that section, does apply to liability of the kind referred to in s 3B(1)(a).

71 Limitation of the award of damages for the birth of a child

(1) In any proceedings involving a claim for the birth of a child to which this Part applies, the court cannot award damages for economic loss for—

(a) the costs associated with rearing or maintaining the child that the claimant has incurred or will incur in the future, or

(b) any loss of earnings by the claimant while the claimant rears or maintains the child.

(2) Sub-s(1)(a) does NOT preclude the recovery of any additional costs associated with rearing or maintaining a child who suffers from a disability that arise by reason of the disability.

(f) [ACL]

(i) CLA limitations may be avoided if Dr breached a statutory warranty mandating 'due care and skill' [ACL ss 60, 64]

(ii) Med negligence claim could be argued as breach of consumer guarantee provisions in [ACL ss 60, 64], and pursued free of statutory restrictions under CLA [Perisher Blue]

i.e. can argue that CLA limitations would not apply because ACL does not have the limitations in CLA and to impose/recognise those under NSW would be inconsistent with the principle that federal law trumps state law in those circumstances

(iii) [ACL ss 60, 64] (formerly [TPA s 74])

(A) Duty of reasonable care in the K for services; this extends to the provision of medical services

i.e. where health and medical services are provided under a contract, then this provision applies to the provision of those healthcare services

ACL s 60 Guarantee as to due care and skill

If a person supplies, in trade or commerce, services to a consumer, there is a guarantee that the services will be rendered with due care and skill.

64 Guarantees not to be excluded etc. by contract

(1) A term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) is void to the extent that the term purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying:

- (a) the application of all or any of the provisions of this Division; or
- (b) the exercise of a right conferred by such a provision; or
- (c) any liability of a person for a failure to comply with a guarantee that applies under this Division to a supply of goods or services.

(2) A term of a contract is not taken, for the purposes of this section, to exclude, restrict or modify the application of a provision of this Division unless the term does so expressly or is inconsistent with the provision.

(g) Collateral benefits

(i) Collateral benefits must be deducted from damage except if there's an obligation to repay those benefits out of the damages e.g. Medicare/Centrelink [Rooty Hill]

(h) Dr's Duty to disclose

(i) Drs must report other health practitioners [HP National Law (NSW) s 141]

Notifiable conduct is defined at [s 140]

(ii) Mandatory reporting [Children & YP Act s 27]

Drs and HPs must report to the Director-General IF they suspect a child is at risk of harm

[HP National Law (NSW)]

140 Definition of notifiable conduct

In this Division—

notifiable conduct, in relation to a registered health practitioner, means—

- (a) practising the practitioner's profession while intoxicated by alcohol or drugs; or
- (b) engaging in sexual misconduct in connection with the practice of the practitioner's profession; or