

Caring for the injured plaintiff

A back to basics for care claims

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Topics

- Common law principles
- Civil Liability Act
- WCR Act

Common law principles

Griffiths v Kerkemeyer (1977) 139 CLR 161

At common law, damages recoverable for gratuitous care – the plaintiff's relevant loss is his or her incapacity for self care and that loss is to be quantified by reference to the value or cost of providing the needed services.

Common law principles

Van Gervan v Fenton (1992) 175 CLR 327

Measure of damages for care services provided to the plaintiff is generally market value, not actual or income foregone by the provider.

Common law principles

Kars v Kars (1996) 187 CLR 354

Damages for gratuitous care not reduced merely because the services are provided by the defendant.

Common law principles

Grincelis v House (2000) 210 CLR 321

Interest can be recovered on damages for past gratuitous care.

Common law principles

CSR Limited v Eddy (2005) 80 ALJR 59

Damages for the loss of a plaintiff's capacity to provide gratuitous services to another recoverable as loss of amenity, but not recoverable at the commercial value of the services.

Civil Liability Act

Section 59: Damages for gratuitous services provided to an injured person if:

- Services necessary.
- Need arises solely out of injury.
- 6hrs per week for 6 months.

Civil Liability Act

Kriz v King [2007] 1 QdR 327

- The term “gratuitous services” has its common law meaning.
- Section 59 does not provide entitlement to damages, but rather modifies and restricts the common law entitlement.
- Once the 6hr / 6 months threshold is met, damages for gratuitous care can be awarded even if the services will later be less than six hours per week.

Civil Liability Act

Section 59(2):

“Damages are not to be awarded for gratuitous services if gratuitous services of the same kind were being provided for the injured person before the breach of duty happened.”

Civil Liability Act

Carroll v Coomber [2006] QDC 146

“The precise effect of that provision [s 59(2)] is not clear. Presumably the intention was to exclude claims in circumstances where these services were being provided by someone else anyway, for example claims for cooking and cleaning by a married man whose wife was doing all the cooking and cleaning before the accident.”

Civil Liability Act

Section 60(1):

A court can not order the payment of interest on ... an award of damages for gratuitous services provided to an injured person.

WCR Act

Section 306E: Paid services provided to worker before injury

If worker was usually provided with paid services before injury, cannot recover damages for those services after injury.

WCR Act

Section 306G: Gratuitous services provided to worker before injury

If worker was usually provided with gratuitous services before injury, cannot recover damages for those services after injury.

WCR Act

Section 306H: Services not required by or provided to worker before injury

“ A court can not award damages for the cost or value of any services provided to the worker after the worker sustained the injury, or that are to be provided to the worker in the future as either gratuitous services or paid services, if the services that have been provided to the worker after the worker sustained the injury are gratuitous services. ”

WRC Act

Duong v Versacold Logistics Ltd [2010] QSC 466:
section 306H “excludes Griffiths v Kirkemeyer
claims in the employment context”.

To what extent?