



## Personal Injury Law 2011

Essential strategies and case law updates  
for assessing and managing injury claims

16 November 2011, The Grace Hotel Sydney

23 November 2011, Stamford Plaza Melbourne

### Program highlights

- Interpretation of Section 5D of the *Civil Liability Act* in Personal Injury Cases
- Psychological injuries in workers compensation claims
- Managing claims and approaching dispute resolution in the current environment: an insurer's perspective
- Liability of principal contractors
- Personal Injury and the regulator
- Assessing damages for catastrophic injury: key considerations and recent trends
- Disease provisions in workers' claims
- Identifying the evidence needed to successfully bring medical negligence claims

### Claim 6 CPD/MCLE points

Product of:



### Speakers

#### Sydney:

- The Honourable Justice Margaret Beazley AO, New South Wales Court of Appeal
- Richard Seton SC, Barrister, Maurice Byers Chambers
- Kellie Edwards, Barrister, Denman Chambers
- Raj Kanhai, Long Tail Claims Manager, QBE Insurance
- Colin Purdy, Barrister, Edmund Barton Chambers
- Gaius Whiffin, Partner, Turner Freeman

#### Melbourne:

- His Honour Judge Philip Misso, County Court of Victoria
- Dorothy Frost, Director-Return to Work Division, WorkSafe Victoria
- Raj Kanhai, Long Tail Claims Manager, QBE Insurance
- Anne Sheehan, Barrister, Douglas Menzies Chambers
- Jacinta Forbes, Barrister, Owen Dixon Chambers East
- Sasha Manova, Barrister, Isaacs Chambers

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# Personal Injury Law 2011

## Essential strategies and case law updates for assessing and managing injury claims

8:30 Conference registration

9:00 Introduction from the Chair

**Richard Seton SC**, *Barrister*, **Maurice Byers Chambers (NSW)**  
**Jacinta Forbes**, *Barrister*, **Owen Dixon Chambers East (VIC)**

### JUDICIAL KEYNOTE – NEW SOUTH WALES

9:10 Interpretation of Section 5D of the Civil Liability Act in Personal Injury Cases

Section 5D of the Civil Liability Act 2002 (NSW) brought about substantial changes to the law of causation. This presentation is designed to help practitioners improve their understanding of causation issues under the Act.

- Origins of Section 5D
- Factual causation
- Scope of liability
- Case studies: *Neal v Ambulance Service of NSW* [2008] NSWCA 346; *Adeels Palace Pty Ltd v Moubarak* [2009]; *Adeels Palace Pty Ltd v Bou Najem* [2009] HCA 48; *Woolworths Limited v Strong and Anor* [2010] NSWCA282

**The Honourable Justice Margaret Beazley AO**, *New South Wales Court of Appeal*

0.75 CPD/MCLE point in ethics and professional responsibility

### JUDICIAL KEYNOTE – VICTORIA

9:10 Serious Injury Applications – common mistakes

Justice Misso brings a wealth of experience and gravitas to this most vexing and highly emotive subject.

**His Honour Judge Philip Misso**, *County Court of Victoria*

0.75 CPD/MCLE point in ethics and professional responsibility

9:55 Psychological injuries in workers compensation claims

This session will address trends in worker's compensation statutory benefit claims and common law damages proceedings for psychiatric injury within the Victorian and NSW legislative schemes for worker's compensation. Consideration will be given to recent decisions in relation to damages actions for psychiatric injury and will touch on evidentiary issues including expert evidence. Consideration will also be given to psychiatric injury arising out of bullying and harassment as well as scope and breach of duty in inherently stressful work environments.

**Kellie Edwards**, *Barrister*, **Denman Chambers (NSW)**  
**Caroline Mills**, *Barrister*, **Aickin Chambers (VIC)**

0.75 CPD/MCLE point in professional skills

10:40 Morning tea

11:00 Managing claims and approaching dispute resolution in the current environment: an insurer's perspective

- An insurer's wish list
- Insurers' obligations in the personal injury claims arena
- A better approach to claims management – putting the injured person in the centre
- An end to adversarialism? Communication, Collaboration, Co-operation and Courtesy as noble aims for injury compensation schemes
- Minimising disputes/maximising outcomes – the 'hired gun' versus the trained professional expert
- Challenges for the industry in working with legal practitioners – a common interest in making compensation schemes work

**Raj Kanhai**, *Long Tail Claims Manager*, **QBE Insurance (NSW and VIC)**

0.75 CPD/MCLE point in professional skills

### Future Events

#### OH&S: National Harmonisation 2011 Gearing up for 2012

8 November 2011, PARKROYAL Darling Harbour, Sydney  
10 November 2011, Brisbane Marriott Hotel  
15 November 2011, Stamford Plaza Melbourne

#### Criminal Law Masterclass – 2011

29 November 2011, Stamford Plaza Melbourne  
30 November 2011, PARKROYAL Darling Harbour, Sydney



## 16 November 2011, The Grace Hotel Sydney 23 November 2011, Stamford Plaza Melbourne

### 11:45 Liability of principal contractors

Recent significant decisions over the duty of care owed by principal contractors to sub-contractors have been heard in the courts in particular the landmark case *Fox v Leighton Contractors* [2009] HCA 35. In this session we look at the ramifications of these and others cases and look at scenarios for the kind of injury claims by sub-contractors against principals focusing primarily, but not exclusively, on the following areas:

- The *Steven v Brodribb* duty of co-ordination
- Non-delegable duties of care
- Principal contractor as occupier

**Colin Purdy, Barrister, Edmund Barton Chambers (NSW)**  
**Karen Streckfuss, Barrister, Foley's list (VIC)**

0.75 CPD/MCLE point in practice management and business skills

### 12:30 Networking lunch for speakers and delegates

### 1:30 Assessing damages for catastrophic injury: key considerations and recent trends

- The fundamental differences in assessing damages for catastrophic injury
- The treatment of life expectancy, and the evidential considerations in addressing this head of damage
- The current state of the law on fund management, and the evidential considerations in the preparation of a claim for fund management
- Additional issues to be considered when preparing a catastrophic injury case

**TBC**

**Sasha Manova, Barrister, Isaacs Chambers (VIC)**

0.75 CPD/MCLE CPD point in professional skills

### 2:15 Personal injury and the regulator

- Return to work initiatives
- Recent cases and successes
- How government is leading the way in personal injury

**Lee Duncombe, Associate Director, Provider and Injury Management Services, WorkCover NSW (NSW)**  
**Dorothy Frost, Director-Return to Work Division, WorkSafe Victoria (VIC)**

0.75 CPD/MCLE point in ethics and professional responsibility

### 3:00 Afternoon tea

### 3:15 Disease provisions in workers' claims

- What is a disease?
- Entitlement to compensation
- When does the disease occur?
- Compensation available
- Specific diseases

**Gaius Whiffin, Partner, Turner Freeman (NSW)**  
**Anne Sheehan, Barrister, Douglas Menzies Chambers (VIC)**

0.75 CPD/MCLE point in ethics and professional responsibility

### 4:00 Identifying the evidence needed to successfully bring medical negligence claims

Complex medical negligence cases can involve teams of experts who sometimes have to be brought in from overseas because local doctors tend to be unwilling to give evidence against medical colleagues. The evidence usually has to be considered in the context of pre-existing illness, complex medical concepts and highly pressured circumstances, sometimes for both plaintiff and defendant.

- Excluding or confirming a diagnosis – *Thompson v Dr Haasbroek* [2010] NSWSC 111
- Loss of chance in medical litigation – how the door seems closed following *Gett v Tabet* [2009] 254 ALR 504
- Mode of expert evidence – *Hirst v Sydney South West Area Health Service* [2011] NSWSC 664
- Circumstantial pressures – systemic failures; unavoidable treatment

**TBC**

**Megan Fitzgerald, Barrister, Aickin Chambers (VIC)**

0.75 CPD point in professional skills

### 4:45 Closing remarks from the Chair

### 5:00 Close of conference

### Who should attend?

- Personal Injuries Law Practice Groups
- Insurance Law Practice Groups
- Barristers
- Partners
- Legal Officers and Managers
- Insurance Industry Executives
- Claims Assessors and Managers

# Priority registration form

# Personal Injury Law 2011

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First name Last name

Position: \_\_\_\_\_

Organisation: \_\_\_\_\_

Postal address: \_\_\_\_\_

Suburb Postcode State

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email (required\*\*): \_\_\_\_\_

### Delegate 2 details

Mr/Ms/Dr: \_\_\_\_\_  
First name Last name

Position: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email (required\*\*): \_\_\_\_\_

### Delegate 3 details

Mr/Ms/Dr: \_\_\_\_\_  
First name Last name

Position: \_\_\_\_\_

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\*\* to send conference confirmation

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 Personal Injury NSW Australian Insurance Law Bulletin – Newsletter  
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#### Conference Resources (I am unable to attend but please send me conference papers)

Please Select	Options	Qty	Price	Subtotal
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TOTAL

\* I would like to attend:

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Event dates & venue

16 November 2011  
The Grace Hotel  
77 York Street  
Sydney NSW 2000

23 November 2011  
Stamford Plaza Melbourne  
111 Little Colins Street  
Melbourne VIC 3000