implicated in any allegation of illegal or other improper conduct.[27]

Although the defendants entered a defence of truth, it was 'strictly not necessary to consider the defendants' defence of truth' because Gray J had found that none of the alleged imputations pleaded by the plaintiffs were conveyed by the article. Nevertheless, Gray J commented on the defendants' failed attempt to establish that Macquarie had not properly provided material at the creditors' meeting, and that Mr Morris had manipulated the meeting to deceive creditors.[28] The defendants failed to show a probable inference from Mr Morris' evidence that there was a deliberate attempt to lie or to mislead creditors at the meeting,[29] which at first instance was a characterisation that Gray J found to be an unfair representation of what was reported in the meeting's minutes.[30] In fact, Gray J asserted that there was 'no justification for the tone of the article or what can only be described as "cheap shots" that the article takes at Macquarie's expense', and expressed disappointment at the journalist's approach to the article published in a newspaper he thought 'prided itself on accurate and responsible reporting'.

CONCLUSION

Gray J handed down a verdict in favour of the defendant, dismissing the plaintiffs' claim against the defendants with costs. The ACT Supreme Court's verdict demonstrates the difficulty plaintiffs face in defamation proceedings, where the evidentiary burden of proof for defamatory imputations is hard to surmount. ■

Notes: **1** M. Pearson, 2007, *The Journalist's Guide to Media Law: Dealing with Legal and Ethical Issues*, 3rd ed, Allen & Unwin. **2** *Defamation Act 2005*: s3 (s115 ACT). **3** Electronic Frontiers Australia: Australian Defamation Laws and the Internet, <http://www.efa.org.au/Issues/Censor/defamation.html> **4** See note 1. **5** Butterworths, *Concise Australian Legal Dictionary*, 3rd ed, LexisNexis, 2004. **6** See note 1. **7** Communications Law Centre: Free Speech and Defamation, <http://www.comslaw.org.au/LeftMenu/FreeSpeechDefamation/tabid/59/Default.aspx> **8** See note 1. **9** See note 3. **10** Partly uniform defamation laws were introduced in 2005 in all jurisdictions, except the ACT (see the *Civil Law (Wrongs) Act 2002*) and the Northern Territory (see *Defamation Act 2006*). Also, sections in the South Australian legislation are sometimes numbered differently. **11** At [46]. **12** At [103]. **13** At [49]. **14** At [50]. **15** 157 ACTR 28 at 30 [8] – [14]. **16** At [90]. **17** 77 ALJR 1657; 201 ALR 77 at [26]. **18** At [92]. **19** At [118]. **20** At [88]. **21** At [88]. **22** At [129]. **23** At [136]. **24** At [145]. **25** At [148]. **26** At [160], [161]. **27** At [167], [172]. **28** At [175]. **29** At [187]. **30** At [182].

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Centrelink – Preclusion period

Morrison v Secretary, DEEWR (Centrelink)[1]

By John Green

Payments of medical expenses made under 'no-fault schemes' are no longer to be included in the lump sum used for calculating a preclusion period.

In this case, the AAT (consisting of Justice Downes, president, the Hon R J Groom, deputy president and Mrs A Cunningham, senior member, sitting in Hobart on 12 November 2008) decided that payments made under the no-fault provisions of the *Motor Accidents (Liabilities and Compensation) Act 1973* (Tas) cannot be included in the lump sum used to calculate the preclusion period.

The tribunal decided that payments made to medical practitioners were not lump sums within the meaning of s1171 of the *Social Security Act 1991* (Cth).

It also decided that such payments made directly by the Tasmanian Motor Accidents Insurance Board (MAIB) to the providers of medical services were not payments received by the person in receipt of relevant welfare payments.

In reaching the latter conclusion, the tribunal relied on the case of *Allianz Australia Insurance Ltd v Insurance Australia Ltd t/as NRMA Insurance*.[2]

The tribunal found that, although the payments may have been made for Mr Morrison's benefit or on his behalf, they were not *received* by him.

Joel Morrison was a 16-year-old boy who went for a drive in a Porsche car, driven by his 16-year-old friend, who had 'borrowed' it from his uncle. Joel received serious closed-head injuries and spent several weeks in hospital but, according to neuropsychological reports, had no significant ongoing disabilities.

The written statement of claim was lodged in the Tasmanian Supreme Court after Joel turned 18 and the MAIB's lawyer pleaded contributory negligence, involvement in a joint criminal enterprise, and *violenti non fit injuria* as defences, but offered to settle for $50,000, which was accepted by Mr Morrison.

The Tasmanian Motor Vehicle Accident Compensation Scheme is a two-tier system under which the MAIB is obliged to pay the medical expenses and 80 per cent of the income for two years of any person who suffers accident injuries through the use of a motor vehicle in the state of Tasmania.

Under s14 of the Tasmanian Act, the MAIB is bound to indemnify the user of a motor vehicle in respect of their liability (other than contractual liability) for the personal injury to a person resulting directly from a motor accident involving that motor vehicle in Tasmania.

Section 27 of the Tasmanian Act relevantly provides that 'if a liability has been incurred for the payment of damages >>

> to a person in respect of a personal injury, the payment to that person of a scheduled benefit, in respect of that personal injury, shall, so far as it extends, be taken to be a payment in or towards the discharge of that liability, and the amount of those damages shall be reduced accordingly.'

Because the decision turned upon the meaning of the words 'lump sum payments', the exact wording of the statutory scheme would not appear to be relevant and the decision would apply to all jurisdictions where payments of medical expenses are made on a no-fault basis, either by workers' compensation insurers, workers' compensation authorities, or by a statutory authority in respect of motor vehicle accidents in those states with such a scheme.

The MAIB paid $51,528.86 in 33 payments to individual providers of medical services, 15 of which were amounts less than $100. The largest was a payment to the Royal Hobart Hospital Private Patient Scheme for $14,763.10. With one exception, all payments were made before Mr Morrison instituted legal proceedings.

In reaching its decision, the tribunal said (at paragraphs 37 and 38):

> 'Von Doussa J, in Banks [(1990)23 FCR 416 at 422], said: "A 'lump sum' payment is simply one which includes a number of items". In accordance with this definition we cannot see how the individual payments for single items made to doctors can be lump sum payments. It would not, however, be a logical scheme, of the kind one would attribute to Parliament, to include any payments addressing, for example, multiple days in hospital and to exclude those covering single consultations with doctors.
>
> We have concluded that, wherever the limit is to be found, more is required to amount to a lump sum payment for the purposes of the scheme than a set of payments for medical services whose grouping is neither entirely logical nor uniform which links items together in some cases and not in others.'

The tribunal summed up its decision as follows (para 46):

> 'We accordingly conclude that whatever is the precise ambit of the phrase "lump sum payment" in the statutory scheme, it does not cover a schedule of payments for medical expenses not dependent on fault and paid continuously over a period of time and not lumped in any organised or ordered way for the purpose of payment and where many items could not be lump sums.'

The tribunal found that definition of 'receives compensation' in s17(5) of the *Social Security Act* was irrelevant because s1171 refers to lump sums but not to compensation and, similarly, the definition of compensation in s17(2) was of no assistance to the department, not only for the above reason, but also because that subsection refers to payments '*made wholly or partly in respect of lost earnings or lost capacity to earn resulting from personal injury*'. Clearly, such payments are not made in relation to lost earnings or earning capacity in Morrison's case.

The tribunal criticised Centrelink, saying:

> 'In a case in which wider concepts of justice seem to have been secured by the decision of that tribunal [SSAT] it is difficult to see why it was thought to be good administrative decision-making to incur the time and expense of an application for review the cost of which must have substantially exceed the amount at stake, namely $3,568.32.' (para 13). ■

Notes: **1** *Morrison v Secretary, Department of Education, Employment and Workplace Relations (Centrelink)* [2008] AATA 1017. **2** [2006] ACTCA 26.

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Does the general test for defamation apply to business and professional reputation?

Radio 2UE Sydney Pty Ltd v Chesterton [2009] HCA 16

By Tilda Hum

The decision of *Radio 2UE Sydney Pty Ltd v Chesterton* [2009] HCA 16 considered the test that should be applied in determining whether a statement is defamatory, particularly in the context of business and professional reputation, and discussed the distinction between defamation and injurious falsehood.

FACTS

The facts of the case concerned statements made by John Laws about the plaintiff journalist, Ray Chesterton, on the *John Laws Morning Show* broadcast on Radio 2UE. Mr Chesterton brought an action for defamation against 2UE as the licensee of the radio station on which the comments were made.