

Personal Injuries Conference 2016

DVD Program

Friday 21 October 2016
Hilton Brisbane

1 CPD point per hour viewed



Gold sponsor



Disc 1
32mins

Welcome

Presenter: **Bill Potts**, President, Queensland Law Society and Director, Potts Lawyers

Opening address

Presenter: **The Honourable Justice Glen C Martin AM**, Supreme Court of Queensland

Disc 2
1hr 47mins



Catastrophic injuries in motor vehicle accidents

On 1 July 2016 the *National Injury Insurance Scheme (Queensland) Act 2016* came into effect. The purpose of this Act is to ensure that persons who suffer particular serious personal injuries as a result of a motor accident in Queensland receive necessary and reasonable treatment, care and support, regardless of fault. The new Act will retain the choice of common law rights for people who sustained catastrophic injuries however, it does restrict damages for treatment, care and support in cases where contributory negligence is 50% or more.

This opening plenary provides comprehensive information on what the National Injury Insurance Scheme (NIIS) entails with short presentations on the legal issues, commentary from the Insurance Commissioner, guidance from an experienced NSW practitioner and insights from a compulsory third party insurer.

An outline of legal issues

This session will bring you up to speed on the legal issues raised by the scheme and address:

- the injuries covered by the scheme
- the limitation period to apply to scheme participants
- data from the Queensland Parliamentary Inquiry about the anticipated number of claimants
- anticipated key areas of conflict that personal injury practitioners should know about, such as:
 - whether or not a person should be in the scheme
 - opting out of the scheme
 - the right of the National Injury Insurance Agency to apply to court to prevent a person claiming damages for treatment, care and support.
- the need to advise clients of potential benefits under the scheme versus lump sum damages claimable, so that clients can determine whether to stay with the scheme or claim damages.
- restrictions on *Griffiths v Kerkemeyer* damages if a person is, or has been, a participant in the scheme.

Expert panel session

Our four presenters then sit down for a panel discussion around key topics related to the subject matter presented.

Presenters: **Greg Spinda**, Partner, Carew Lawyers
Neil Singleton, Insurance Commissioner, Insurance Commission, Queensland Treasury
Courtenay Poulden, Partner, Beilby Poulden Costello Lawyers and Accredited Specialist (Personal Injuries) – NSW
Angus Cairn, Manager Claims Compulsory Third Party, RACQ

Chair and Facilitator: **Michael Garbett**, Partner, Moray and Agnew Lawyers and Chair, Queensland Law Society Accident and Compensation Committee

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Disc 3
57mins



The duty to act in good faith in the ADR process

Parties' willingness to act in good faith is integral to the alternative dispute resolution (ADR) process. Such willingness ensures that the fairness of the process is maintained and that parties can have confidence in any agreement reached through that process. An important aspect of the success of ADR processes is the ability of parties to rely on each other to act honestly and fairly when seeking to resolve or narrow the terms. This session provides guidance on the type of conduct that is expected of parties in ADR and addresses:

- steps for effective preparation
- taking a client centred approach
- practical communication tips and techniques.

Presenter: Justin Toohy, Director ADR, Administrative Appeals Tribunal

Chair: Ken Taylor, Director, Purcell Taylor Lawyers and Accredited Specialist (Personal Injuries) – Qld and Councillor, Queensland Law Society



The ethics of negotiations

Negotiations, mediation and various forms of dispute resolution are not ethics-free zones. The courts constantly remind practitioners of their obligation not to inflate or exaggerate their client's claims and that they must not engage in misleading or deceptive communication. This session highlights key issues that personal injury practitioners should address when considering ethical responses.

Presenter: Shane Budden, Ethics Solicitor, Queensland Law Society

Chair: Ken Taylor, Director, Purcell Taylor Lawyers and Accredited Specialist (Personal Injuries) – Qld and Councillor, Queensland Law Society

Disc 4
38mins



Clients without capacity: The legal and financial issues

All practitioners recognise every client is unique. It follows that a practitioner's approach to deal with issues associated with a client's capacity needs to be tailored to the client's individual circumstances. This practical session offers valuable insight on how to deal with legal and financial issues for clients without capacity, as they transition from the finalisation of legal proceedings to administration and funds management. The session addresses:

- administration options available to clients
- the sanction process and steps after sanction (including relevant court rules and material filed in support, the role of QCAT)
- current issues relating to the calculation of management fees
- how compensation funds should be invested for the catastrophically injured to satisfy applicable legislative and administrator requirements.

Presenters: Eliana Katsavos, Manager – Law Sector, Ipac Securities Limited
Simon Rogers, Client Adviser, Ipac Securities Limited

Chair: Darren Moore, Partner, Carew Lawyers and Accredited Specialist (Personal Injuries) – Qld

Disc 5
46mins



STREAM 1A

Appeals regarding WorkCover or Regulator determinations

Based on statistics published by the Queensland Workers Compensation Regulator, approximately 90,000 workers compensation statutory claims were lodged in Queensland (in the 2014/15 reporting period), of which:

- 80% were accepted, with 5% rejected and 15% withdrawn or not progressed
- of the 5% rejected, 4% of decisions were disputed and reviewed
- of the decisions disputed and reviewed, over 60% resulted in a decision to confirm the insurer's original decision.

In this session our presenter discusses:

- the definition of "injury" in the *Workers Compensation and Rehabilitation Act 2003* (Qld) (WCRA)
- the "reasonable management action" exclusion in section 32(5) WCRA
- circumstances where an employer would challenge the acceptance of an injury (and on what grounds)
- reviews and appeals under Chapter 13 WCRA
- recent cases
- practical takeaways from the session.

Presenter: Stephen Hughes, Partner, Piper Alderman and Accredited Specialist (Personal Injuries) – Qld

Chair: Luke Murphy, Partner, MurphySchmidt Solicitors and Accredited Specialist (Personal Injuries) – Qld

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Disc 6
42mins



STREAM 1B

The assessment of damages in a joint PIPA/WCRA claim

The assessment of damages in any personal injuries claim is a demanding exercise. When that claim involves competing jurisdictions this exercise becomes complex. This session will help you to understand the principle issues to consider when assessing damages in joint PIPA/WCRA claims, viewed in the aftermath of the decision in *Byrne v People Resourcing (Qld) Pty Ltd & Anor* [2014] QSC 269. Our presenter draws attention to the potential ramifications of the Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016.

Presenter: Andrew McLean Williams, Barrister, Queensland Bar

Chair: Darren Moore, Partner, Carew Lawyers and Accredited Specialist (Personal Injuries) – Qld

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Disc 7
46mins



STREAM 2A

Workers compensation: Assessment of cases involving contributory negligence

In this session, we consider the present day approach to the assessment of contributory negligence in view of the 2010 amendments to the *Workers' Compensation and Rehabilitation Act 2003* (WCRA). During the session, there is consideration of:

- contributory negligence in an historical context
- common law contributory negligence principles applying to workers' injury claims, aside from the WCRA provisions
- the effect of the WCRA contributory negligence provisions
- apportionment legislation and principles
- the extent to which the argument that excusing the worker's conduct as "*mere inadvertence, inattention or misjudgement*" has continuing relevance in light of legislative provisions
- a suggested step-by-step approach to the assessment of contributory negligence.

Presenter: Rohan Armstrong, Barrister, Queensland Bar

Chair: Luke Murphy, Partner, MurphySchmidt Solicitors and Accredited Specialist (Personal Injuries) – Qld

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Disc 8
37mins



STREAM 2B

Medical negligence claims: How to build your case for success

Whether you are acting for the plaintiff or defendant, constructing your case in a methodical way is paramount. Medical negligence claims require good foundations and specific strategies for success. In this session, our presenter provides practical tips on how to build a solid case and comment on what your opponent will do to demolish it.

Presenter: Kalina Pyra, Associate, Hall and Payne Lawyers

Chair: Kara Thomson, Senior Associate, Cooper Grace Ward Lawyers, Accredited Specialist (Personal Injuries) – Qld and Councillor, Queensland Law Society

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Disc 9
1hr



Managing a multigenerational team

Whether you are a green shoot starting out in your career or consider yourself an old oak tree, your success as a lawyer depends on your ability to communicate with people of all ages. Each generation brings with it unique experiences, insights and abilities. The key to success is to understand these differences so they become strengths rather than barriers. In this interactive and practical session you will learn simple yet effective tips for managing people of all generations, whether they are team members, your leaders or your clients.

- Understand why each generation communicates differently.
- Learn three key words that unlock the mystery of each generation.
- Discover the one factor that will improve your communication with all generations.
- Learn how to handle common cross generational communication situations.

Presenter: Karen Schmidt, Frontline Leadership Expert

Chair: Will Barsby, Partner, Shine Lawyers

Disc 10
55mins



Pleadings boot camp

Just like a fitness boot camp, this session builds your strength and fitness as a personal injuries specialist. Don't sweat, whether you are a seasoned practitioner who needs to brush up on the rules, or an early career lawyer who is learning the ropes, this interactive session will get you into shape and hone your drafting skills. You will experience a practical workout in the following areas:

- what you must plead
- what not to plead (including the impact of the *Australian Solicitors Conduct Rules*)
- the general rules with which you must comply under the Uniform Civil Procedure Rules
- the difference between pleadings and particulars
- practical comparisons of well drafted and poorly drafted claims
- relevant considerations for managing a more complex claim
- what amounts to a defective pleading and how to avoid delivering one
- using your pleading as a strategic tool in the litigation.

Presenters: Tim Matthews QC, Barrister, Queensland Bar
Charles Matthews, Barrister, Queensland Bar

Chair: Cameron Seymour, Partner, Mullins Lawyers and Accredited Specialist (Personal Injuries) – Qld

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Closing remarks

Presenter: Bill Potts, President, Queensland Law Society and Director, Potts Lawyers

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