

# The limits of purposive statutory construction

Victoria O'Halloran reports on *Taylor v The Owners of Strata Plan 11564* [2014] HCA 9.

On 2 April 2014 the High Court delivered its judgment in *Taylor v The Owners of Strata Plan 11564* determining that s 12(2) of the *Civil Liability Act 2002* (NSW) does not limit a claim for damages under the *Compensation to Relatives Act 1897* (NSW).

The case is important for two reasons. First, it defines the intersection between the Civil Liability Act and the Compensation to Relatives Act. Secondly, it clarifies the High Court's approach to the limits of purposive statutory construction.

### Facts

The husband of the appellant, Susan Joy Taylor, was killed in December 2007 when an awning outside a chemist shop in Balgowlah on Sydney's northern beaches collapsed on him. Mrs Taylor commenced proceedings in the Supreme Court of New South Wales claiming damages pursuant to ss 3 and 4 of the Compensation to Relatives Act for the loss of financial benefits that she and her children had hoped to receive had her husband not been killed.

Prior to his death, Mr Taylor was a successful land surveyor in private practice. The central issue to be determined in this case was whether s 12(2) of the Civil Liability Act operated to limit Mr Taylor's gross weekly earnings and thereby limited the damages which his family was entitled to receive for the loss of expectation of financial support under the Compensation to Relatives Act.

### The Civil Liability Act

Section 12 of the Civil Liability Act relevantly provides:

This section applies to an award of damages:

for past economic loss due to loss of earnings or the deprivation or impairment of earning capacity; or

for future economic loss due to the deprivation or impairment of earning capacity; or

for the loss of expectation of financial support.

In the case of any such award, the court is to disregard the amount (if any) by which *the claimant's* gross weekly earnings would (but for the injury or death) have exceeded an amount that is three times the amount of average weekly earnings at the date of the award [emphasis added].

In the Supreme Court proceedings it was accepted by the parties that Mr Taylor's income would have substantially exceeded three times the amount of average weekly earnings. On this

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basis, the parties agreed to the preliminary determination of the question of whether an award of damages to Mrs Taylor and her children under the Compensation to Relatives Act was limited by the operation of s 12(2) of the Civil Liability Act.

The primary judge in the Supreme Court found that s 12(2) of the *Civil Liability Act 2002* did limit the claim for damages for loss of an expectation of financial support to three times gross average weekly earnings.

The New South Wales Court of Appeal found that the literal interpretation of s 12(2) did not apply to the deceased's gross weekly income and so would not limit the award of damages. However, while the Court of Appeal unanimously concluded that the literal meaning of s 12(2) does not apply the limitation to the gross weekly earnings of the deceased, the majority of the Court of Appeal found that the court could construe the provision as if it contained additional words to give effect to its evident purpose to limit the award of damages in respect of high earning individuals.

Mrs Taylor appealed and ultimately, the question before the High Court was whether the s 12(2) limitation was to be construed as applying to the deceased's gross weekly earnings.

### The High Court's decision

The majority of the High Court (French CJ, Crennan and Bell J; Gageler and Keane JJ dissenting) found that s 12(2) of the Civil Liability Act did not limit Mrs Taylor's claim for damages pursuant to the Compensation to Relatives Act because s 12(2) did not require the court to disregard the amount by which Mr Taylor's gross weekly earnings would have exceeded three times the average weekly earnings, but for his death.

The High Court found that damages awarded in a Compensation to Relatives Act action are personal injury damages within Part 2 of the Civil Liability Act. However, the claimant in a Compensation to Relatives Act action does not have the same meaning as 'claimant' in s 12 of the Civil Liability Act. In a Compensation to Relatives Act claim the claimant is usually the spouse or child of the deceased. In a Civil Liability Act claim

the claimant is the person who has suffered loss or damage. The Civil Liability Act looks to the gross weekly earnings of the claimant to determine whether their entitlement to damages is limited. This is not the case in a Compensation to Relatives Act action, where the claimant's income is generally not relevant and the deceased person's gross average weekly earnings is not capped by reference to s 12(2) of the Civil Liability Act.

The majority expressed the view that the purpose of s 12 of the Civil Liability Act was to limit the component of an award of damages that is determined by reference to a claimant's high earnings in a claim for personal injury damages brought by or on behalf of high-earning individuals.

On no view in this case could the deceased, Mr Taylor, be considered to be the 'claimant' and as such no limitation should be applied to the deceased's gross weekly earnings.

### Purposive statutory construction

Mrs Taylor argued that the NSW Court of Appeal had erred by not giving s 12(2) of the Civil Liability Act its ordinary grammatical meaning.

The majority of the High Court agreed.

The respondents to the High Court appeal contended that s 12(2) of the Civil Liability Act should be given a *purposive interpretation* and as such, words should be added to the section to ensure that the legislative purpose was upheld.

The primary judge in the Supreme Court took the view that the legislative purpose of s 12(2) was to 'limit claims for tortiously caused damage, and to restrict financial loss claims for high-earning individuals'.

As such, the phrase in s 12(2) – 'the claimant's gross weekly earnings' means 'the gross weekly earnings on which *the claimant relies*'.

The majority of the High Court did not support this approach and took the view that the word 'claimant' should be given its ordinary meaning, that is, a person who makes or is entitled to make a claim.

In the majority's view a purposive construction of the word 'claimant' may allow the reading of a provision as if it contained additional words or omitted certain words with the effect of expanding its operation. However, the High Court concluded that any modified meaning must be entirely consistent with the language actually used by the legislature. If a purposive construction is given that departs too far from the statutory text it could violate the separation of powers in the Australian Constitution (citing *Newcastle City Council v GIO General Ltd* (1997) 191 CLR 85; *Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389). The minority High Court judges (Gageler and Keane JJ) agreed with the conclusion reached by Justice Garling at first instance and by the majority in the Court of Appeal, although noted that their reasoning differed slightly from that of the majority in the Court of Appeal in that their Honours considered that the construction adopted by the majority in the Court of Appeal was 'very strained'.

In their view, damages recoverable under the Compensation to Relatives Act are plainly 'personal injury damages' in respect of which Part 2 of the Civil Liability Act applies and the damages that Mrs Taylor was seeking should be limited to three times the average weekly earnings. Their preferred construction of s 12(2) was to construe the reference in s 12(2) to 'the claimant's gross weekly earnings' as a reference to the gross weekly earnings *on which the claimant relies* in the claim for damages that is the subject of an award of damages, rather than the gross weekly earnings of the person who happens to be the claimant.

### Conclusion

The High Court has clarified that s 12(2) of the Civil Liability Act does not limit a claimant's entitlement to damages under the Compensation to Relatives Act.

The High Court also clarified that while a purposive approach to statutory interpretation is permissible the proposed modified meaning of the statute must be consistent with the actual language used by the legislature.