

care for other members of the family as naturally as they extend to the capacity to attend to their own personal functions. There is no distinction in point of principle... Indeed, to draw the distinction only serves to discriminate against those who devote themselves to the care of others within the family household (usually women) to the benefit of the wrongdoer. (See generally R Graycar, *Compensation for Loss of Capacity to Work in the Home* (1985) 10 CID LR 528; *Sturch v Willmott* (1997) 2 QDR 310 at 321)."

His Honour said that it was difficult and unreal to disentangle the domestic duties performed by a household member in fulfilment of compelling moral duties to another member. Further his Honour said:

"Acknowledgment that a mother's interrupted capacity to make her usual contributions to a household is compensable involves the law's belated recognition of the economic value of such work...."

Mason P examined the limits of the need. He said:

"To my knowledge, the existing case law does not extend beyond compensating for the interrupted capacity to care for infant children in a household family or to do general housework for the benefit of the spouse or children in a household family... In *Randall v Dull* (1994) 13 WAR *Griffiths (v Kerkemeyer)* was applied to a wife's inability to perform "voluntary" cleaning work in a hairdressing salon, but she was in partnership with her husband in that business."

His Honour said that a court must determine how long a Plaintiff's need would last in *Griffiths v Kerkemeyer* cases and "allow for the ebb and flow of circumstances that would have impacted upon the Plaintiff apart from the tort." Referring to *Carrs v Carrs* (1996) 187 CLR 354 at 360 and 370 his Honour referred to the requirement as being that or providing damages as compensation for the Plaintiff's need "as established by

the evidence". He concluded that in future a court will have to make informed hypothetical predictions as to how long a plaintiff uninjured would have cared for another member of his or her household. He also examined the "need" to care for persons other than the Plaintiff's own children and suggested that different considerations might apply in the case of persons for whom no legal obligations of care exists and who are not members of the Plaintiff's household being cared for at the time of the accident. He gave the example of aging parents.

I suggest however, as a matter of principle, that even the care of aging parents should not be excluded. It will be a matter of evidence how likely the care of aging parents in the future may have taken place had the Plaintiff not been injured. The situation is analogous to "loss of a chance"; or on the positive side, the chance of a positive situation occurring. **PL**

GST Alert

Trick is to get client to stump up on time

Kate Marshall

The GST will impose not only a cost burden on the legal profession but will force solicitors to pay more attention to chasing bills, finalising contractual details and understanding their obligations to clients.

Clients in turn will generally have to pay within 30 days or face a financial penalty for late payment.

Freehill Hollingdale & Page partner, Mr Geoff Mann, who is an adviser to the Law Council of Australia on the GST, said the tax would impose an additional cost on small practitioners' fees and costs. His firm is facing a one-off bill of \$50,000 to upgrade its financial software in preparation for the GST.

"That's quite a costly exercise, even when the Government and the tax office have us believe it's quite simple.

"An awful lot of firms will be impacted by cash-flow problems because of the GST, and what is most likely to happen is that they will try to raise fees but competitive pressure will force them to keep [them] down."

The trick for law firms is to ensure clients pay their GST before it falls due to the Australian Taxation Office. Invoicing a client on an accruals basis will trigger a GST liability, so lawyers need to make sure the invoice includes all the details required under the GST act that are not included in "normal" bills. Some GST consultants even



Fitting the bill... lawyers will need to remember that invoicing clients on an accruals basis will trigger a GST liability.

suggest that lawyers could bill clients for the GST component of the total bill and seek full payment later, although that issue has not been widely discussed.

But Mr Simon Begg, a consultant with Corrs Chambers Westgarth, warned: "If you're too rigorous in collecting bills customers will take their trade elsewhere, so there is a trade-off between offending the

customer and collecting in a timely fashion."

Mr Mann has written to the ATO seeking clarification of the "grey area" of how firms should deal with disbursements — the costs incurred when lawyers undertake work on behalf of clients. Examples include barristers' fees, search fees, titles office lodging fees, stamp duty and, arguably, photocopying and phone charges.

Mr Begg said solicitors would have to decide whether to pass on the cost directly to the client, or whether to pay the GST as the client's agent and leave the client to claim back the GST.

"The fact is that they will need to be careful when they are charging disbursements that they handle [the procedure] correctly," he said.

Mr Robert Richards, a member of

the Law Society of NSW GST technical response subcommittee, said the biggest issues for solicitors and lawyers were to ensure they had a thorough understanding of their responsibilities to clients and their responsibilities as legal practitioners once the GST came into effect.

He said the Law Society was committed to making certain that the legal profession realised how all-encompassing the GST would be.

"First, this means getting your agreements right, finding out what to put into your documentation, worrying about long-term contracts and making certain you have yourself covered — in fact, worrying about every single transaction.

"Second, solicitors will have to know how to input into the GST system and that it will increase the cost of legal services to clients."

He also warned there would be "real panic" if software manufacturers failed to deliver products on time.

Where the Law Society and the Australian Taxation Office appear to differ is on how many legal practitioners would cross the all-important \$1 million business turnover threshold for switching to accruals-based GST remittances.

The ATO's deputy commissioner on GST, Mr Rick Matthews, said many smaller solicitors would be able to choose whether to make the change to accruals-based accounting, since many would still fall below the \$1 million threshold.