

Indemnity Costs

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The most recent decision of the Northern Territory Supreme Court was that of Kearney J in *Lin v Katamon Pty Ltd and Anor*⁹ which reviewed the law as it was at the time, and held that indemnity costs may be awarded "in cases which are clearly exceptional in nature; for example where the conduct of the losing party has involved some unmeritorious deliberate or high-handed conduct, and element of deliberate wrongdoing" so that a departure from the ordinary rule is justified. Since his Honour's decision indemnity costs orders have been made with increasing frequency in Australian jurisdictions, particularly in order to enforce the procedural requirements of the court. Further, to the extent that the reasoning in the recent line of Federal cases expands or clarifies the cases in which indemnity costs may be ordered, it may be suggested that it is more likely than not that the Northern Territory Supreme Court will accept that reasoning and similarly consider making orders for

indemnity costs in wider instances than before. Until the issue arises before the Supreme Court again, Plaintiff's representatives can rely on the Federal Court decisions for their persuasive value.

The most important point to note however is that the classes in which indemnity costs may be ordered are not closed, and the actions of defendants in litigation are varied. Particularly in light of the financial burden the "yawning gap" places on individual litigants, practitioners acting on behalf of individuals should be aware that, while not the usual order, indemnity costs may be ordered not only where a Defendant has failed to respond to a Calderbank offer or has been guilty of misconduct in the proceedings, but also where it has failed to adequately prepare, has ignored or refused to respond to stated deficiencies in its case, or in any other number of ways which have not yet been considered.

Finally, indemnity costs are not a one

way street. An ill prepared Plaintiff is just as much at risk, and a Plaintiff's lawyer needs to be particularly on guard, once again because the quantum of the costs will in almost all cases have a far greater effect on an individual application rather than an institutional Defendant.

1 *Qantas Airways Limited v. Dillingham Corporation and Others* Roger J unreported May 1987

Fountain Selected Meats (Sales) Pty Ltd v. International Produce Merchants Pty Limited and Others (1998) 81 ALR 397

Singleton v. Macquarie Broadcasting Holdings Limited (1991) 247 NSWLR 103

2 (1993) 32 NSWLR 649

3 (1993) 46 FCR 225

4 (1996) 137 ALR 579

5 *re: The Honourable Murray Wilcox, a Judge of the Federal Court of Australia ex parte Venture Industries Pty Ltd, Harry Kioussis and Penny Kioussis*, (unreported) 138 of 1996 - 15 January 1997

6 *FAI General Insurance Co Ltd v. Burns & Anor* (1997) 9 ANZ Ins Cases 61-383

7 *Sammy Russo Suppliers Pty Ltd v. Australian Safeway Stores Pty Ltd - Federal Court* 4 June 1998

8 *Yates Property Corporation Pty Ltd v. John Boland & Ors* (1997) 174 ALR 685

9 *Kearney J proceedings* no 29 and 30 of 1995 - 31 May 1995

Private Health Insurance Ombudsman

The new role of Private Health Insurance Ombudsman has been created in a move to increase consumer confidence about the industry and upgrade the handling of inquiries.

The Ombudsman's office is an extension of the former Private Health Insurance Complaints Commissioner, with greater powers and direct access to doctors and private hospitals.

Under the new arrangements, the Ombudsman can investigate problems raised by partners and dependents of private health fund contributors and can make recommendations to resolve complaints direct to doctors and private hospitals.

Previously, the Commissioner could receive complaints only from fund contributors and could recommend remedial action only to the health funds themselves.

Mary Perrett, formerly the Complaints Commissioner, is the first Private Health Insurance Ombudsman.

Ms Perrett, a qualified nurse and lawyer says: "The establishment of the industry Ombudsman and the legislative changes are positive steps for both the health funds and their members".

A recent study carried out by Reark Research found that 78 per cent of consumers were satisfied with the Complaints Commissioner. And the introduction of the Ombudsman's Office will make the broad range of services we provide more accessible'.

"Consumers will feel more comfortable dealing with the Ombudsman's Office, because they know an Ombudsman is an independent voice and can give advice on a wide range of health insurance issues. It can also act as a mediator to resolve disputes between members and their health funds, hospitals and doctors."

The Law Society has a range of pamphlets distributed by the Private Health Insurance Ombudsman. Contact the Law Society for the following pamphlets:

- When the Doctor's Bill makes you Ill
- The Ten Golden Rules of Health Insurance
- Service Charter; Helping, Welcoming, Listening and Answering
- Making a Complaint

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