


Recent developments in disclosure in personal injury actions in Queensland



On 24 October 2000 the Queensland Court of Appeal delivered its judgment in the matter of *Parr v Bavarian Steakhouse Pty Ltd*¹. Since then, much debate has ensued as to exactly how far-reaching the decision is in terms of disclosure in personal injury actions.

The Decision

The plaintiff was seeking damages for personal injuries alleged to have arisen during the course of her employment. It became apparent during the proceedings that the plaintiff's solicitors had obtained a statement and a completed questionnaire from the plaintiff.

After consideration of the relevant rules, the Court of Appeal unanimously agreed that although the documents were prima facie protected by legal professional privilege, the rules were sufficiently clear as to require documents of that type to be disclosed.

The plaintiff was ordered to provide the defendant with a copy of her statement and the completed questionnaire.

Interestingly, Pincus JA, made the following comments:

'Counsel for the Appellant argued that unfortunate consequences would ensue if the Rules in question were given the wide effect their terms, read literally, required. If that proves to be so, one would expect them to be altered, eventually ...'

Amendment to the Rules

On 21 December 2001 amendments to the Uniform Civil Procedure Rules came into effect.

The more substantive amendments relate to the disclosure requirements in personal injury actions. The information/documents which a plaintiff must now disclose (which they were not previously expressly required to disclose prior to the amendments) includes:

- Rule 547(3)(g): details of any accident, injury or illness suffered by the plaintiff in the three years immediately before the injury, or since the injury;
- Rule 548(1)(d)(iv): documents concerning the plaintiff's actual (and prospective loss of) superannuation entitlements;
- Rule 548(1)(e): documents about the cost of meeting the needs of the plaintiff alleged to have arisen or increased because of the injury;



Chris McManus is an Associate at McInnes Wilson
PHONE 07 3231 0609 EMAIL CMcManus@mcw.com.au

- Rule 548(1)(f): documents concerning any additional expense to which it is alleged the plaintiff has been or will be put because of their injury;
- Rule 548(1)(g): documents that are, or contain, a contemporaneous record, account or description of:
 - (i) the plaintiff's injury, disability, pain and suffering, loss of amenities or treatment; or
 - (ii) the consequences of them; or
 - (iii) the cost resulting from them.

The defendant's obligations in terms of disclosure of the above documents are substantially mirrored in the amendments to Rule 551 UCPR. Curiously though, there is no obligation on the defendant to disclose any documents that are, or contain, a contemporaneous record, account or description of the plaintiff's injuries etc.

Another important amendment is to Rule 555 UCPR, concerning privilege. That Rule now provides:

'Subject to the express requirements of Rules 548 and 551, this Part does not require a party to disclose, to any extent greater than required by Chapter 7 Part 1, a document in relation to which there is a valid claim to privilege from disclosure.'

This amendment makes it clear that legal professional privilege will be maintained over documents other than those 'expressly required' to be disclosed by rr 548 & 551. The emphasis is now on the protection of 'privilege' rather than the protection of 'legal advice' (which had been the case with the previous wording of r 555).

In addition, the widely phrased provision requiring a plaintiff to disclose 'any other documents about the plaintiff's claim for damages' has been removed.

Diary Notes

Prior to the recent amendment to the Rules, there had already been much debate in practise as to the types of documents which would be required to be disclosed.

It has even been argued that diary notes of conversations with plaintiff clients would be discoverable pursuant to the relevant provisions of the UCPR and the *Parr* decision. Such an argument was advanced in *Dzafirovic v Collins & Anor*: on the basis that these diary notes were documents in the possession or under the control of the plaintiff about the plaintiff's injury, loss or treatment.

In rejecting the defendant's application, his Honour formed the view that diary notes were not documents which would come within the scope of Rules 547 and 548 because they were not in the possession or under the control of the plaintiff. He accepted that such documents were prepared by the solicitor to assist them in performing their professional duties. They remained the property of the solicitor and were not the property of the plaintiff.

Current Impact

It remains to be seen whether the inclusion of the newly worded Rule 555 will be the response foreshadowed by the

Honourable Mr Justice Pincus in terms of limiting the broad requirements of disclosure in the UCPR (as they then were) detailed in the *Parr* decision.

Certainly, it seems clear any documents (presumably including statements made by the plaintiff themselves) which contain information about the amount of wages paid to the plaintiff, the tax paid by the plaintiff, superannuation entitlements, the cost of meeting the plaintiff's needs (commercial rates of assistance and the like) or future expenses, or that which contain a contemporaneous record or description of the plaintiff's injury, will be required to be disclosed. Otherwise, Rule 555 protects all other documents from disclosure where there is a valid claim to privilege.

The most likely source of debate will be exactly what type of documents are encompassed by the description 'documents which are, or contain, a contemporaneous record, account or description of the plaintiff's injuries, consequences and costs.' In the meantime, there will no doubt be a great deal of conjecture about the true effect of each of the amendments until a further decision (of the calibre of *Parr*) is delivered. **PL**

Footnote:

¹ [2000] QCA 429 (24 October 2000).

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