SUPREME COURT OF QUEENSLAND

CITATION:	*Grice v State of Qld* [2005] QCA 272
PARTIES:	**JEAN GRICE** (plaintiff/respondent) **v** **STATE OF QUEENSLAND** (defendant/appellant)
FILE NO/S:	Appeal No 10818 of 2004 DC No 2899 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	5 August 2005
DELIVERED AT:	Brisbane
HEARING DATE:	3 June 2005
JUDGES:	McMurdo P, McPherson and Williams JJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**1. Appeal dismissed** **2. The parties are to file and serve any written submissions as to costs within seven days of the delivery of these reasons**
CATCHWORDS:	DAMAGES - MEASURE OF DAMAGES - PERSONAL INJURIES - GENERAL PRINCIPLES - respondent successful in action for damages in negligence for personal injuries against appellant - respondent awarded damages for past and future gratuitous services provided by her intellectually disabled adult son - following injury respondent received gratuitous services for more than six hours per week for the first nine weeks and then for less than six hours per week - services required by respondent indefinitely - s 54(2) *Personal Injuries Proceedings Act* 2002 (Qld) provides damages are not to be awarded for gratuitous services if the services are provided or are to be provided (a) for less than six hours per week and (b) for less than six months - primary judge found both subsections (a) and (b) of s 54(2) needed to be met to disentitle the respondent to damages for gratuitous services - whether both subsections (a) and (b) of s 54(2) need to be met before a claimant is disentitled to damages for gratuitous services

DAMAGES - MEASURE OF DAMAGES - PERSONAL INJURIES - GENERAL PRINCIPLES - respondent received assistance from her son before sustaining personal injuries giving rise to action - s 54(3) *Personal Injuries Proceedings Act* 2002 (Qld) provides damages are not to be awarded for gratuitous services if gratuitous services of the same kind were being provided for the claimant before the date of the incident giving rise to the personal injury on which the claim is based - whether on the evidence primary judge entitled to conclude the assistance required by the respondent since the injury was not of a kind provided before the injury

DAMAGES - MEASURE OF DAMAGES - PERSONAL INJURIES - GENERAL PRINCIPLES - primary judge made global award of $20,000 to respondent for future gratuitous services considering on the facts it was not possible to make a precise mathematical calculation - reduction made to award for fact a commercial provider would deliver assistance more efficiently than respondent's son and contingencies of life - s 52(2) *Personal Injuries Proceedings Act* 2002 (Qld) provides a five per cent discount rate for determining the present value of future gratuitous services - whether any error in assessment of damages made by primary judge

Acts Interpretation Act 1954 (Qld), s 14A, s 14B(1)(a)
Civil Liability Act 2003 (Qld), s 59(1)(c)
Personal Injuries Proceedings Act 2002 (Qld), s 52(2), s 54(1), s 54(2), s 54(3)
Motor Accidents Act 1988 (NSW), s 72(2)

Bradshaw v A-G (Qld) [1998] QCA 42; Appeal No 873 of 1998, 17 March 1998, cited
Bropho v Western Australia (1990) 171 CLR 1, cited
Brown v Hale [1996] 1 Qd R 234, applied
CIC Insurance Ltd v Bankstown Football Club Ltd (1997) 187 CLR 384, cited
Coco v The Queen (1994) 179 CLR 427, cited
Elford v FAI General Insurance Co Ltd [1994] 1 Qd R 258, applied
Geaghan v D'Aubert [2002] NSWCA 260; (2002) 36 MVR 542, considered
K & S Lake City Freighters Pty Ltd v Gordon & Gotch Ltd (1985) 157 CLR 309, cited
Kelsey v Hill [1995] 1 Qd R 182, cited
Netstar Pty Ltd v Caloundra City Council [2004] QCA 296; [2005] 1 Qd R 287, cited
Potter v Minahan (1908) 7 CLR 277, cited
Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355, cited
Sullivan v Gordon (1999) 47 NSWLR 319, considered

COUNSEL: R J Douglas SC for the appellant
S C Williams QC, with J P Kimmins, for the respondent

SOLICITORS: C W Lohe, Crown Solicitor for the appellant
Carew Lawyers for the respondent

[1] **McMURDO P:** The 77 year old respondent plaintiff, Ms Grice, rents her Stafford home, which she shares with her intellectually disabled adult son, Peter, from the Queensland Housing Commission. On 9 December 2001, when she was 73 years old, she was walking on the concrete path to the clothesline. Her foot went over the side of the path and she fell heavily, fracturing her wrist. She successfully brought an action against her lessor, the appellant defendant, the State of Queensland, for damages in negligence for personal injuries resulting from the fall. The learned primary judge found the appellant liable and assessed damages together with interest at $60,825.25. This award included damages for past gratuitous services provided by her son, Peter, of $12,534 with interest at $947.80 and for future gratuitous services of $20,000. This appeal concerns only that part of the damages award relating to gratuitous services.

[2] The appellant contends that the learned primary judge erred in not giving effect to s 54(2) *Personal Injuries Proceedings Act* 2002 (Qld) ("the Queensland Act"); a proper construction of s 54(2) would preclude Ms Grice from recovering any damages for past gratuitous services; in any case s 54(3) of the Queensland Act precluded or diminished any award for gratuitous services where services of the same kind were provided to her before her injury; and the primary judge erred in discounting the award for future gratuitous services by three per cent rather than five per cent as required by s 52(2) of the Queensland Act.

[3] Section 54(2) of the Queensland Act came into force retrospectively on 18 June 2002. It was repealed by the *Civil Liability Act* 2003 (Qld), s 101, which came into force on 9 April 2003, and which was not retrospective. This decision therefore will have application only to causes of action arising before 9 April 2003 and not decided prior to 18 June 2002.

Relevant provisions of the Queensland Act

[4] Section 54 of the Queensland Act relevantly provides:

> "(1) Damages are not to be awarded for gratuitous services unless -
>
> (a) the services are necessary; and
>
> (b) the need for the services arose solely out of the personal injury arising out of the incident.
>
> (2) Damages are not to be awarded for gratuitous services if the services are provided, or are to be provided -
>
> (a) for less than 6 hours per week; and
>
> (b) for less than 6 months.
>
> (3) Damages are not to be awarded for gratuitous services if gratuitous services of the same kind were being provided for the claimant before the date of the incident giving rise to the personal injury on which the claim is based.
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> … "

The primary judge's findings

[5] The learned primary judge rejected the appellant's contention that damages under s 54(2) could not be awarded for gratuitous services unless the services were provided or were to be provided for more than six hours per week over at least six months. Her Honour determined that s 54(2) should be interpreted in accordance with its ordinary literal meaning, accepting Ms Grice's contention that she would only be disentitled to damages for gratuitous services under s 54(2) if both (a) and (b) were met.[1]

[6] Ms Grice gave evidence that before the accident she was responsible for all cleaning, meal preparation, washing and gardening; her son, Peter, assisted her with tasks such as meal preparation, grocery shopping, raking the garden and washing the dishes; he tidied his own room and did his own ironing; they worked together. After the accident Peter gave her a great deal more assistance.

[7] Occupational therapist Ms Stephanie McCahon reported that since the accident Peter provided 35 hours assistance per week in the first three weeks, 12½ hours per week over the next six weeks and then four hours per week as at the date of her assessment (2 July 2002). The current assistance provided by Peter of up to four hours per week with domestic tasks was reasonable considering Ms Grice's ongoing functional restrictions.

[8] The evidence at trial did not suggest that those restrictions were other than permanent. The evidence accepted by her Honour, which is not the subject of this appeal, was that Ms Grice received gratuitous services arising solely out of her wrist injury caused by the appellant's negligence for more than six hours per week for nine weeks and then for less than six hours per week and that she will require those services indefinitely. If the appellant's contention as to the interpretation of s 54(2) is correct, Ms Grice would not be entitled to damages for those gratuitous services.

Section 54(2) Queensland Act

[9] The golden rule of statutory interpretation, followed by the primary judge, is that the grammatical and ordinary meaning of the words is to be given unless it results in an absurd result.[2] The courts have also recognized the desirability in a parliamentary democracy of interpreting legislation consistent with the legislature's discernable intent: *Project Blue Sky Inc v Australian Broadcasting Authority*.[3] This purposive approach to interpreting legislation has been given statutory authority in s 14A *Acts Interpretation Act* 1954 (Qld).

[10] The main purpose of the Queensland Act is stated to be to assist the ongoing affordability of insurance through appropriate and sustainable awards of damages for personal injury.[4] This purpose is to be achieved in a number of ways, relevantly including putting reasonable limits on awards of damages based on claims.[5] More specifically, s 54(1) of the Queensland Act states that the gratuitous services must be necessary and arise solely out of the personal injury arising out of the accident. There is nothing in the stated purposes in the Queensland Act which is inconsistent with the interpretation given to s 54(2) by the learned primary judge, an

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1 *Grice v State of Queensland* [2004] QDC 510; DC No 2899 of 2003, 25 November 2004, [37].
2 D C Pearce and R S Geddes, *Statutory Interpretation in Australia* (5th ed, 2001), 21, [2.4].
3 (1998) 194 CLR 355, 381 - 382, [69] - [71].
4 The Queensland Act, s 4(1).
5 Above, s 4(2)(d).

interpretation which is also consistent with the ordinary meaning of the words in the section.

[11] Section 14B(1)(a) *Acts Interpretation Act* 1954 (Qld) allows a court to consider extrinsic material to assist in the interpretation of statutes where the provision is ambiguous or obscure. As the learned primary judge noted the ordinary meaning given to the words in s 54(2) of the Queensland Act does not suggest that the provision is ambiguous or obscure. A court may nevertheless have regard to the wider context of a legislative provision to better understand the context of the statute, its objects and the problem which it was designed to overcome: *CIC Insurance Ltd v Bankstown Football Club Ltd*[6] and *K & S Lake City Freighters Pty Ltd v Gordon & Gotch Ltd*.[7] This approach is consistent with the purposive approach to statutory interpretation.[8] Where it is obvious that a simple mistake has been made in the form of a printing or drafting error a court will correct it.[9]

[12] The appellant relies upon a body of extrinsic material to support its contention. First, it relies on the observations (especially those emphasized) of the Hon R J Welford, the Attorney-General and Minister for Justice, during the Second Reading Speech of what was to become the Queensland Act:

> "The insurance crisis that has dominated the Queensland and Australian landscape for the past 12 months … we have seen an explosion in the cost of insurance premiums … Our government has led the nation in addressing this crisis. … While our government has no power to dictate to private insurance companies the amount they charge for premiums, this legislation will remove one of the excuses used for high charges. State governments have the power to change laws concerning negligence and the framework that influences compensation payments. Our government has responded with this … Bill as our primary initiative of legislative reform. The purpose of this bill is to give certainty to those involved in personal injuries litigation and streamline the claims process. The bill is framed around three key strategies:
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> • reducing the cost of legal proceedings;
> • reducing the number of frivolous claims for minor injuries; and
> • capping the size of large claims.
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> … In particular the number of smaller claims will be reduced because of:
>
> • limits on costs recoverable;
> • streamlined processing of claims; and
> • minimum thresholds for claims for gratuitous care …
>
> Queensland has never gone anywhere near the extravagant payouts of courts in New South Wales, where juries have consistently handed down what some in the judiciary are now referring to as Santa Claus payouts. Nevertheless, our government is acting pre-emptively to prevent a blow-out in costs in the future. … Awards for gratuitous services are only to be awarded for services arising solely as a result

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6 (1997) 187 CLR 384, Brennan CJ, Dawson, Toohey and Gummow JJ, 408.
7 (1985) 157 CLR 309, Mason J (as he then was), 315.
8 D C Pearce and R S Geddes, *Statutory Interpretation in Australia* (5th ed, 2001), 26 - 27.
9 D C Pearce and R S Geddes, *Statutory Interpretation in Australia* (5th ed, 2001), 38.

> of the injury. In other words, a person is not compensated for services that were necessary before the injury occurred. *An award for gratuitous services can only be paid if the service is required for a minimum of six hours per week and for a minimum of six months* … " (my emphasis)[10]

[13] It is immediately obvious that the Attorney-General's italicized words are inconsistent with the words subsequently enacted by Parliament in s 54(2). Is the error in the statute enacted by Parliament or in the Attorney-General's observations during the Second Reading Speech?

[14] The Explanatory Notes relevantly provided:

> "The Bill raises a number of issues relating to fundamental legislative principles arising from:
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> …
>
> • the code for gratuitous services claims.
>
> The Bill may be perceived as limiting individual rights in relation to common law claims for damages. However the amendments are aimed at ensuring an appropriate balance between benefits and the cost of premiums, and ensuring adequate compensation for the moderately and seriously injured, rather than those with relatively minor injuries.
>
> …
>
> The amendments are aimed at ensuring an appropriate balance between benefits and the cost of premiums and preserving adequate compensation to the moderately and seriously injured, rather than those with relatively minor injuries.
>
> …"[11]

The Explanatory Notes do not provide any clear assistance in answering the conundrum.

[15] The appellant contends that, contrary to the Attorney-General's statement in the Second Reading Speech, Queensland did not lead the way in enacting the Queensland Act but copied s 54(2) from New South Wales legislation. It contends that this Court should follow the interpretation given by the New South Wales Court of Appeal in *Geaghan v D'Aubert*[12] to a comparable New South Wales provision because the Queensland and New South Wales Acts are *in pari materia* (literally "in the same subject matter"). In that case Stein JA, with whom Handley JA and Foster AJA agreed, construed s 72(2) of the *Motor Accidents Act* 1988 (NSW) ("the New South Wales Act") as requiring that both limbs of (a) and (b) of that subsection must be satisfied before compensation for gratuitous services was payable under that provision.

[16] Section 72(2) of the New South Wales Act then provided:

> "No compensation is to be awarded if the services are provided, or are to be provided:
>
> (a) for less than 6 hours per week, and
>
> (b) for less than 6 months."

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10 Queensland, *Parliamentary Debates*, Legislative Assembly, 18 June 2002, 1848 - 1849 (R J Welford).

11 Explanatory Notes, Personal Injuries Proceedings Bill 2002 (Qld), 2.

12 [2002] NSWCA 260; (2002) 36 MVR 542.

[17] In reaching their conclusion the court in *Geaghan* took into account the objects stated in the New South Wales Act, which included exhortations to limit damages.[13] Part 6 of the Act, in which s 72 is contained, has its own objects, relevantly:

> "(a) to control the amount of damages that may be awarded to a claimant for the purpose of ensuring that the scheme under this Act is affordable, and
>
> (b) to achieve this control by the deliberate strategy of placing the burden of ensuring affordability on those who suffer relatively minor injuries so that sufficient funds are available to more fully compensate those who suffer more severe injuries."[14]

Section 72 contains its very own objects:

> "(a) to limit to average weekly earnings the level of payment for services for additional domestic assistance, and
>
> (b) to restrict access to those payments to claims where the need is long term, and
>
> (c) to exclude claims where the services provided would have been rendered as a matter of course regardless of the relevant motor accident."[15]

[18] The New South Wales Act specifically provided that in interpreting its provisions, the construction which promotes an object of the Act should be preferred.[16]

[19] The court in *Geaghan* considered the legislative history of s 72 of the New South Wales Act which in its earlier form provided:

> "(2) No compensation shall be awarded unless the services are provided, or are to be provided, for not less than 6 months and may be awarded only for services provided or to be provided after the 6 month period.
>
> …
>
> (4) No compensation shall be awarded unless the services provided or to be provided are not less than 6 hours per week and may be awarded only for services provided or to be provided after the first 6 hours."

In *Sullivan v Gordon*[17] the New South Wales Court of Appeal interpreted that section as meaning that a plaintiff was not entitled to compensation unless the entitlement was for more than six hours per week and for more than six months.

[20] The court in *Geaghan* also considered the relevant Second Reading Speech amending s 72 in which the New South Wales Attorney-General stated that no compensation would be payable unless a plaintiff was provided with home care/domestic services for more than six hours per week and also for more than a six month period. The relevant Explanatory Notes were consistent with the Attorney-General's stated opinion.

[21] Because of that extrinsic material, the legislative history of s 72, *Sullivan v Gordon* and the objects stated in the New South Wales Act the court adopted a purposive

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13 The New South Wales Act, s 2A.

14 Above, s 68A.

15 Above, s 72(1).

16 Above, s 2B.

17 (1999) 47 NSWLR 319, Beazley JA, 335, [74].

construction and concluded that both limbs (a) and (b) of s 72(2) had to be satisfied before a plaintiff was entitled to compensation under that provision.

[22] The appellant also emphasizes that s 54(2) of the Queensland Act has since been repealed and replaced by s 59(1)(c) *Civil Liability Act* 2003 (Qld) which relevantly provides:

> "(1) Damages for gratuitous services are not to be awarded unless -
>
> …
>
> (c) the services are provided, or are to be provided -
>
> (i) for at least 6 hours per week; and
>
> (ii) for at least 6 months."

The appellant contends that because the legislature has now enacted a provision consistent with the interpretation favoured by the appellant it can be inferred this was also the legislature's intent in enacting s 54(2).

[23] The Queensland Act and the New South Wales Act are not so alike in their subject matter, drafting or legislative framework that s 54(2) of the Queensland Act should necessarily be construed consistently with the interpretation given by the New South Wales Court of Appeal to s 72(2) of the New South Wales Act in *Geaghan* or to the earlier form of that section in *Sullivan*. The New South Wales Act applied solely to claims for damages for injuries suffered in motor vehicle collisions whereas the Queensland Act did not apply to such injuries. The Queensland and New South Wales statutes are not part of a uniform national legislative scheme. Of even more significance, the stated objects of the New South Wales Act differed from those in the Queensland Act and were more unequivocally supportive of the interpretation given to s 72(2) in *Geaghan*. I refer particularly to s 72(1)(b) which restricted payments for gratuitous services to long term needs. The New South Wales Court of Appeal was also influenced by the legislative history of s 72(2), the court's previous interpretation of the section in its earlier form in *Sullivan* and the relevant Second Reading Speech and Explanatory Notes. All these matters supported the court's interpretation in *Geaghan*. None of these considerations apply to the interpretation of s 54(2) of the Queensland Act.[18] In my view the interpretation given to s 72(2) of the New South Wales Act in *Geaghan* does not substantially assist this Court in interpreting the meaning of s 54(2) of the Queensland Act.

[24] The ordinary, plain meaning of the clear words of s 54(2) of the Queensland Act is consistent with the interpretation given by the learned primary judge. That interpretation is also consistent with the stated objects and purposes of the Queensland Act and with the Explanatory Notes; it places a significant limit on a plaintiff's common law entitlement to damages for gratuitous services. The fact that the legislature subsequently replaced s 54(2) with a provision containing an even more restrictive approach does not assist in determining the legislative intent in s 54(2). The only matter which suggests the legislative intent may have been that both s 54(2)(a) and s 54(2)(b) must be met before a plaintiff can claim damages for gratuitous services is the emphasized observation of the Attorney-General in the Second Reading Speech.[19] I am not persuaded that this Court should accept the legislature has made a mistake in wording s 54(2) simply because of the

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18 Cf *Bonser v Melnacis* [2002] 1 Qd R 1, 13, [39].

19 See [12] of these Reasons.

Attorney-General's words, which may well have been expressed loosely and almost certainly would not have been subject to the careful review process which can be expected to apply prior to the enactment of legislation.

[25] The appellant did not refer to another fundamentally important and highly relevant principle of statutory interpretation. Prior to the coming into operation of s 54(2) of the Queensland Act Ms Grice had an unfettered right to seek damages for gratuitous services. A statute will only be regarded as limiting such a common law right if it does so clearly and unambiguously: *Potter v Minahan*,[20] *Bropho v Western Australia*[21] and *Coco v The Queen*.[22]

[26] Despite the Attorney-General's emphasized observations, the words in s 54(2) should be interpreted consistently with their clear and unambiguous ordinary meaning. This interpretation is consistent with the objects and purposes of the Queensland Act, especially where the interpretation urged on the Court by the appellant would further restrict a claimant's common law rights without providing a clear statement to that effect: cf *Netstar Pty Ltd v Caloundra City Council*,[23] *Kelsey v Hill*[24] and *Bradshaw v A-G (Qld)*.[25] Under s 54(2) of the Queensland Act damages will not to be awarded for gratuitous services where the services were or will be for both less than six hours per week and also over less than a six month period. Ms Grice was entitled under s 54(2) to an award for damages for gratuitous services.

Section 54(3) of the Queensland Act

[27] The appellant contends that the primary judge erred in failing to consider under s 54(3) of the Queensland Act the extent of the services provided by Ms Grice's son, Peter, prior to the accident and in failing to exclude these services from the damages award.

[28] Both Ms Grice and the occupational therapist, Ms McCahon, recognized in their evidence that Peter provided some assistance to Ms Grice prior to the accident. Their evidence, which was accepted by the primary judge, was that this assistance substantially increased after the accident and that a professional carer could provide that assistance more efficiently. The amount of the increase in assistance was identified by Ms McCahon in her report and is set out earlier in these reasons.[26] Ms Grice gave evidence supporting Ms McCahon's assessment. The learned primary judge was entitled to conclude from this unchallenged evidence that the assistance required since the accident as itemized by Ms McCahon was of a kind not provided before the accident. This ground of appeal is also without substance.

Was the wrong discount rate applied under s 52(2) of the Queensland Act?

[29] Although the appellant did not pursue this ground of appeal in its oral submissions, it contended in its notice of appeal and in its written submissions that her Honour erred in adopting a three per cent discount rate for determining the present value of

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20 (1908) 7 CLR 277, O'Connor J, 304.
21 (1990) 171 CLR 1, Mason CJ, Deane, Dawson, Toohey, Gaudron and McHugh JJ, 18.
22 (1994) 179 CLR 427, Mason CJ, Brennan, Gaudron and McHugh JJ, 437.
23 [2005] 1 Qd.R. 287, 292 [16], 293 [18] - [19].
24 [1995] 1 Qd R 182, 184.
25 [1998] QCA 42; Appeal No 873 of 1998, 17 March 1998, Davies JA, 4, McPherson JA, 19 - 20.
26 These Reasons [6] - [8].

the future gratuitous services rather than the five per cent required by s 52(2) of the Queensland Act.

[30] Her Honour accepted that Ms Grice has a 12 year life expectancy; Ms Grice's wrist was likely to degenerate further resulting in the need for future assistance either from her son or from a carer who would work more efficiently. Her Honour accepted that the award should be reduced to allow for the contingencies of life and considered that on the facts it was not possible to make a precise mathematical calculation of the appropriate award for future services. Instead, the judge adopted a global approach and assessed damages for future services at $20,000.[27]

[31] Her Honour's acceptance of a 12 year life expectancy is uncontroversial. The award of damages for future services at $20,000 over 12 years amounts to less than $1,700 per year, approximately $34 per week. The agreed commercial rate of assistance was $16 per hour so that the award allowed for slightly over two hours of care per week for 12 years. Ms McCahon's evidence was that Ms Grice will require four hours assistance with domestic tasks per week from her son indefinitely because of her injury. Accepting, as her Honour did, that a commercial provider would deliver the required assistance more efficiently than Peter, the award was appropriate. The award was a broad-brush approach, not a mathematical calculation. It adequately discounted for all contingencies. The appellant has not established that the learned primary judge erred in discounting on the three per cent tables rather than on the five per cent tables. In any case the difference to any award would be so modest that it is not a matter which would warrant the interference of this Court: *Elford v FAI General Insurance Co Ltd*[28] and *Brown v Hale*.[29] This ground of appeal is also without substance.

Conclusion

[32] It follows that the appeal fails. The appellant has asked for the opportunity to make submissions as to the appropriate order for costs of the appeal and the original trial. The parties should be given seven days in which to do so.

Orders

[33] 1. Appeal dismissed.
2. The parties are to file and serve any written submissions as to costs within seven days of the delivery of these reasons.

[34] **McPHERSON JA:** I agree with the decision and the reasons given by the President and Williams JA.

[35] **WILLIAMS JA:** This appeal essentially raises the question as to the proper construction of s 54(2) of the *Personal Injuries Proceedings Act* 2002 ("the Act"). Relevantly it provides:

> "Damages are not to be awarded for gratuitous services if the services are provided, or are to be provided -
> (a) for less than 6 hours per week; and
> (b) for less than 6 months."

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27 *Grice v State of Queensland* [2004] QDC 510; DC No 2899 of 2003, 25 November 2004, [42].
28 [1994] 1 Qd R 258.
29 [1996] 1 Qd R 234.

[36] At first instance the learned District Court judge interpreted the provision literally and concluded that the respondent would only be disentitled to damages for gratuitous services if both (a) and (b) were met. That involved rejection of the appellant's contention that damages could not be awarded for gratuitous services unless those services were provided or were to be provided for more than six hours per week over at least six months.

[37] As McMurdo P has pointed out in her reasons the Attorney-General during the Second Reading Speech suggested that an "award for gratuitous services can only be paid if the service is required for a minimum of six hours per week and for a minimum of six months".

[38] One issue is whether or not the construction suggested in the Second Reading Speech should overrule the literal construction of the statutory provision in question.

[39] It is clear that the legislative provision in question, and other provisions of the Act, were designed to restrict or limit the quantum of damages recoverable for personal injury. It was perceived that the previous approach of the courts was too generous to plaintiffs, and the provision in question was designed to limit the amount recoverable for gratuitous services provided by others to the injured plaintiff.

[40] Where a statutory provision so limiting the recovery of damages has a clear literal meaning, that meaning should be preferred to an arguably alternative construction supported by the Second Reading Speech.

[41] The Second Reading Speech was delivered on 18 June 2002 about two months before the decision of the Court of Appeal of New South Wales in *Geaghan v D'Aubert* (2002) 36 MVR 542 was handed down; therefore it cannot be said that the Queensland Parliament adopted the language which it did for s 54(2) because of that decision.

[42] Further, as the President has pointed out in her reasons, the decision in *Geaghan* was heavily influenced by a consideration of the history of similar provisions in New South Wales, a consideration not relevant to Queensland. Further, as pointed out in those reasons, there are significant differences between the New South Wales and Queensland legislation and in consequence there is no compelling reason for this Court to adopt the construction placed by a New South Wales court on a similar provision in the legislation there.

[43] Because of subsequent amendments this decision will only affect causes of action arising before 9 April 2003 and not concluded prior to 18 June 2002. Subsequent amendments have clarified the position, and that reinforces my view that this Court should adopt the literal construction of s 54(2) in the form with which we are now concerned.

[44] I agree generally with the reasons of the President, and with the orders proposed.