

HIGH COURT OF AUSTRALIA

FRENCH CJ,
HAYNE, CRENNAN, KIEFEL AND BELL JJ

STATE OF NEW SOUTH WALES

APPELLANT

AND

JAYSON WILLIAMSON

RESPONDENT

New South Wales v Williamson
[2012] HCA 57
12 December 2012
S416/2011

ORDER

Appeal dismissed with costs.

On appeal from the Supreme Court of New South Wales

Representation

J B Simpkins SC with D F Villa for the appellant (instructed by Crown Solicitor (NSW))

B W Walker SC with F L Austin for the respondent (instructed by Byles Anjos Lawyers)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

New South Wales v Williamson

Costs – Limit on maximum costs in connection with claim for "personal injury damages" – *Legal Profession Act* 2004 (NSW), s 338 – Where "personal injury damages" defined to have same meaning as in *Civil Liability Act* 2002 (NSW), Pt 2 – Whether maximum costs limitation applies to claims for personal injury damages resulting from intentional acts.

Costs – Limit on maximum costs in connection with claim for "personal injury damages" – *Legal Profession Act* 2004 (NSW), s 338 – Claim for false imprisonment not claim for "personal injury damages" – Where such claim is included in claim for damages and not severable part of claim, the claim for damages not claim for "personal injury damages".

Statutory interpretation – Principles – Reading provision in context – Whether, when operative statute adopts term in source statute, account must be taken of operation of term in source statute – Effect of amendments to statute.

Words and phrases – "award of personal injury damages", "claim for personal injury damages", "false imprisonment", "maximum costs", "personal injury damages", "same meaning".

Civil Liability Act 2002 (NSW), Pt 2, ss 3B, 11.

Legal Profession Act 2004 (NSW), Pt 3.2 Div 9, ss 337, 338.

1 FRENCH CJ AND HAYNE J. This appeal was heard together with three appeals brought by Certain Lloyd's Underwriters against John Cross, Mark George Thelander and Jill Maria Thelander. These reasons should be read with the reasons in those appeals¹ ("the Lloyd's Appeals").

The issues

2 As in the Lloyd's Appeals, this appeal concerns the construction of New South Wales statutory provisions fixing the maximum costs that can be awarded in certain personal injury damages matters. Two questions arise in this appeal. Does a "claim for personal injury damages" include a claim for personal injury damages based on an intentional tort? Does it include a claim for damages for false imprisonment?

3 Answering these questions requires consideration of Div 9 of Pt 3.2 (ss 337-343) of the *Legal Profession Act* 2004 (NSW) ("the 2004 Legal Profession Act") and the *Civil Liability Act* 2002 (NSW) ("the Liability Act") as it stood after the amendments made by the *Civil Liability Amendment (Personal Responsibility) Act* 2002 (NSW) ("the Personal Responsibility Act")².

The facts

4 The respondent sued the State of New South Wales in the District Court of New South Wales for damages for trespass to the person and false imprisonment. He alleged that the State was vicariously liable for the actions of police officers who, in August 2006, had allegedly thrown him to the ground, restrained him, confined him in a police wagon, further assaulted him and then, without explanation, released him without charge. The action in the District Court was settled and orders were made by consent disposing of the proceedings. Judgment was entered for the respondent (as plaintiff) for \$80,000 "plus costs of these proceedings as agreed or assessed".

Proceedings at first instance and in the Court of Appeal

5 No agreement having been reached about the costs that were to be allowed, the respondent applied for an order transferring the proceedings to the

1 *Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Cross* [2012] HCA 56.

2 Although the Liability Act has been amended since the amendments made by the Personal Responsibility Act, the detail of those later amendments need not be considered. They do not suggest any different answer to the determinative question of construction.

Supreme Court and for a declaration that costs in the proceedings "are not regulated by section 338 of the *Legal Profession Act* [2004]". Hall J made³ orders to that effect.

- 6 By leave, the State appealed to the Court of Appeal (Hodgson, Campbell and Macfarlan JJA) against the orders of Hall J. The Court of Appeal dismissed⁴ the appeal and identified two different bases for doing so. First, the Court held⁵ that a claim for false imprisonment, at least in so far as it extends to a claim for damages for deprivation of liberty and loss of dignity, is not a claim for personal injury damages within the meaning of s 338(1) of the 2004 Legal Profession Act. Where such a claim is included in a claim for damages settled by a single undifferentiated sum, the Court concluded⁶ that the amount recovered, though less than \$100,000, is not recovered "on a claim for personal injury damages" and does not engage s 338(1). Second, the Court of Appeal held⁷, following the earlier decision of a differently constituted Court of Appeal in *Cross v Certain Lloyds Underwriters*⁸, that the expression "personal injury damages" in the 2004 Legal Profession Act does not include claims for intentional torts.

Appeal to this Court

- 7 By special leave the State now appeals to this Court. These reasons will show that the costs limiting provisions of Div 9 of Pt 3.2 of the 2004 Legal Profession Act apply if the amount recovered on a claim for personal injury damages does not exceed \$100,000, whether that claim is framed in negligence or as an intentional tort. In particular, contrary to the conclusion reached by the Court of Appeal, s 338(1) should not be construed as confined in its operation to claims that might result in awards to which Pt 2 of the Liability Act would apply.

- 8 These reasons will further show, however, that the Court of Appeal was right to hold that the costs limiting provisions did not apply in this case. The

3 *Williamson v State of New South Wales* (2010) Aust Torts Reports ¶82-055.

4 *State of New South Wales v Williamson* [2011] NSWCA 183.

5 [2011] NSWCA 183 at [54]-[56], [61]-[67] per Campbell JA (Hodgson and Macfarlan JJA agreeing).

6 [2011] NSWCA 183 at [54]-[56], [68] per Campbell JA.

7 [2011] NSWCA 183 at [3] per Hodgson JA, [27], [40] per Campbell JA, [117] per Macfarlan JA.

8 [2011] NSWCA 136.

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respondent received a lump sum settlement of his District Court proceedings for trespass to the person and false imprisonment. At least to the extent to which the claim for false imprisonment seeks damages for deprivation of liberty and loss of dignity, it is not a claim for damages for personal injury. Because no part of the lump sum settlement can be attributed to either the respondent's claim for trespass or his claim for false imprisonment, it is not possible to say of the amount that was recovered that it was "recovered on a claim for personal injury damages".

9 It is necessary to refer to the provisions that apply in this case and to notice some differences between these provisions and those considered in the Lloyd's Appeals.

The applicable provisions

10 Section 338(1) of the 2004 Legal Profession Act, like its legislative ancestor⁹ considered in the Lloyd's Appeals, fixed the maximum costs for legal services provided to a party in connection with "a claim for personal injury damages", "[i]f the amount recovered on [the claim] does not exceed \$100,000". A law practice and its client could contract out of this limitation¹⁰ by a "costs agreement" complying with Div 5 of Pt 3.2 of the 2004 Legal Profession Act. But s 338(4)(b) provided that, subject to some exceptions that need not be considered, when the maximum costs for legal services provided to a party are fixed by Div 9 of Pt 3.2, "a court or tribunal cannot order the payment by another party to the claim of costs in respect of those legal services in an amount that exceeds that maximum".

11 Like its legislative ancestor¹¹, the 2004 Legal Profession Act provided¹² a definition of "personal injury damages" that referred to the Liability Act. Section 337(1) of the 2004 Legal Profession Act provided that:

"personal injury damages has the same meaning as in Part 2 of the *Civil Liability Act 2002*."

9 *Legal Profession Act 1987* (NSW), s 198D(1).

10 s 339.

11 s 198C(1).

12 s 337(1).

The definition's reference to a particular Part of the Liability Act was new and reflected amendments that had been made to the Liability Act by the Personal Responsibility Act before the 2004 Legal Profession Act was enacted.

12 The Personal Responsibility Act altered the structure of the Liability Act. When originally enacted, the Liability Act had been divided into two parts: Pt 1 dealt with preliminary matters and Pt 2 regulated the amount recoverable as an "award of personal injury damages". The Personal Responsibility Act introduced a new Pt 1A dealing with negligence and new Pts 3-10 dealing with subjects as diverse as mental harm, proportionate liability, liability of public and other authorities, intoxication, self-defence and recovery by criminals, good samaritans, volunteers and apologies. The definition of "personal injury damages" which had originally appeared in Pt 1 of the Liability Act¹³ was moved into Pt 2¹⁴ together with an amended definition of "injury". Whereas the original definition of "injury" included¹⁵ "psychological or psychiatric injury", the Personal Responsibility Act amended it to include¹⁶ "impairment of a person's physical or mental condition". The Personal Responsibility Act also changed the definition of "personal injury damages". The original definition was¹⁷ "damages that relate to the death of or injury to a person *caused by the fault of another person*" (emphasis added) whereas the amended definition – "damages that relate to the death of or injury to a person"¹⁸ – made no reference to cause or fault.

13 As originally enacted, s 9 of the Liability Act governed the application of the provisions of Pt 2 to awards of personal injury damages. It provided¹⁹, in effect, that subject to certain stated exclusions, the Part applied "to and in respect of an award of personal injury damages" even if the damages were recovered in an action for breach of contract or in any other action. The Personal Responsibility Act introduced a new s 3B which was cast in terms that regulated the application of the whole Act, not just one or more particular Parts of the Act. By sub-s (1), it provided that "[t]he provisions of this Act do not apply to or in

13 s 3.

14 s 11.

15 s 3.

16 s 11.

17 s 3.

18 s 11.

19 s 9(1) and (3).

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respect of civil liability (and awards of damages in those proceedings)" of seven different classes. By sub-s (2), it provided that certain identified provisions of the Act were to apply to motor accidents. And by sub-s (3), it provided that regulations made under the Act might exclude a specified class or classes of civil liability (and awards of damages in those proceedings) from the operation of all or any specified provisions of the Act.

14 The first class of excluded liabilities, identified in s 3B(1)(a), was:

"civil liability in respect of an intentional act that is done with intent to cause injury or death or that is sexual assault or other sexual misconduct".

In respect of this first class, it was provided that the whole Act except Pt 7, concerning self-defence and recovery by criminals, was not to apply.

15 Having thus provided that the provisions of the Act, subject to some exceptions, do not apply to or in respect of certain classes of civil liability (and awards of damages in those proceedings), the Personal Responsibility Act further regulated the application of Pt 2 of the Act concerning personal injury damages. It inserted a new s 11A, which provided that:

- "(1) This Part [Pt 2] applies to and in respect of an award of personal injury damages, except an award that is excluded from the operation of this Part by section 3B.
- (2) This Part applies regardless of whether the claim for the damages is brought in tort, in contract, under statute or otherwise.
- (3) A court cannot award damages, or interest on damages, contrary to this Part."

16 It is as well to deal first with the general question of whether a claim for damages for an intentional tort is a "claim for personal injury damages" before moving to the more specific issue about the claim for damages for false imprisonment.

Construction

17 The definition of "personal injury damages" in s 337(1) of the 2004 Legal Profession Act lay at the centre of the debate about construction in this Court, just as the definition of the same expression in the Act's legislative ancestor lay at the centre of the debate in the Lloyd's Appeals. The central point of difference between the parties in this appeal mirrored that in the Lloyd's Appeals: does the definition of "personal injury damages" in the 2004 Legal Profession Act (it "has the same meaning as in Part 2" of the Liability Act) direct attention only to the words of the definition of that expression in s 11 of the Liability Act or does it

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direct attention to both the words of the definition and the kinds of awards of personal injury damages to which Pt 2 of that Act applied? The appellant advanced the first construction, the respondent the second.

18 The first construction should be adopted. "Personal injury damages" in the 2004 Legal Profession Act means any and every form of damages that relate to personal injury to a person whether that injury results from a failure to take reasonable care or the commission of an intentional act with intent to cause injury. This construction accords with the text of the relevant provisions of both Acts. The second construction does not. The definition of "personal injury damages" in s 337(1) does not refer to the operation or application of the Liability Act. It refers to the *meaning* of the expression in Pt 2 of the Liability Act, and s 11 in Pt 2 of the Liability Act provides that personal injury damages "*means* damages that relate to the death of or injury to a person" (emphasis added). That definition draws no distinction between damages awarded in claims for negligence and damages awarded in claims for an intentional tort.

19 The respondent in this appeal made submissions in support of the second construction – limiting Div 9 of Pt 3.2 of the 2004 Legal Profession Act to claims that, if successful, would result in awards of damages regulated by Pt 2 of the Liability Act – that differed from those presented in the Lloyd's Appeals in support of the same construction of the earlier legislation.

20 In this appeal, the respondent emphasised three elements of the statutory text. The first element was the words "meaning" and "as in" in the definition of "personal injury damages" in s 337(1) of the 2004 Legal Profession Act (it "has the same meaning as in Part 2" of the Liability Act). The respondent submitted that the "definition of a term may simply describe the words which are printed in a definition section" but that the "*meaning* of the term is the way in which it operates – what it signifies" (emphasis added). "The meaning is the way in which the word is used to convey what it conveys, either to bring about a legal consequence to describe a state of affairs or to stipulate a state of affairs". And the respondent submitted that the words "as in Part 2" command a reader to understand the defined expression "in the way it is used in Part 2".

21 The second element was s 3B of the Liability Act. As noted earlier, s 3B(1) provided that "[t]he provisions of this Act do not apply to or in respect of civil liability (and awards of damages in those proceedings)" in certain listed classes of liability. The respondent observed that "those are very broad words of disapplication". One class of excluded civil liability was²⁰, subject to exceptions that need not be considered, "civil liability in respect of an intentional act that is

20 s 3B(1)(a).

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done with intent to cause injury". It followed, so the respondent submitted, that intentional torts have "absolutely no connection with Part 2 at all" because the Liability Act as a whole did not apply to intentional acts done with intent to injure except in very limited (and presently irrelevant) respects. Accordingly, the argument continued, "personal injury damages" in the 2004 Legal Profession Act could not have a meaning that would include claims for personal injury damages for intentional torts because including claims of that kind would not give the expression "the same meaning as in Part 2" of the Liability Act.

22 The third element of the text emphasised by the respondent was ss 11 and 11A of the Liability Act. The respondent pointed out that s 337(1) of the 2004 Legal Profession Act referred to Pt 2 of the Liability Act and that it did not make specific reference to the definition of "personal injury damages" in s 11. The respondent further pointed out that s 11A(1) excluded from Pt 2 those classes of liability excluded by s 3B of the Liability Act and that s 11A is in Pt 2 of the Liability Act. The latter observation was said to be important because having regard to s 11A was thus consistent with the definition of "personal injury damages" in the 2004 Legal Profession Act (it has the same meaning "as in Part 2").

23 In aid of these arguments, the respondent relied on statements by Dixon J in *The Producers' Co-operative Distributing Society Ltd v Commissioner of Taxation (NSW)*²¹ emphasising the need to consider the context provided by other provisions of an Act when considering a definition provided for in that Act and picked up and applied by another.

24 The respondent was right to focus attention on the text of the relevant provisions and to disclaim any particular reliance upon extrinsic material to overcome the statutory language. Nevertheless the respondent's argument should be rejected. The text does not support the construction urged.

25 First, the respondent's argument assumed that the expression "personal injury damages" was the hinge on which Pt 2 of the Liability Act turned. Hence, the respondent submitted that the expression "personal injury damages" should be understood as having a particular meaning when used in Pt 2 of the Liability Act because of s 11A(1). But that is not right. Section 11A(1) used the larger composite expression "award of personal injury damages". Section 11A identified the *awards* of personal injury damages that are regulated by Pt 2 of the Liability Act. It says nothing about the meaning of the defined expression "personal injury damages". That the larger composite expression, and not simply "personal injury damages", is the fulcrum of the provision is further

21 (1944) 69 CLR 523 at 536; [1944] HCA 39.

demonstrated by the second phrase of s 11A(1): "except an *award* that is excluded from the operation of this Part by section 3B" (emphasis added).

26 What Dixon J said in the *Producers' Co-operative Case* does not support the respondent's arguments. Dixon J observed²² that if the provisions of the Act in which a definition is found (that definition then being picked up by another Act) give "any guidance as to the meaning or application of such a phrase *in the definition* ... we should refer to it and in *interpreting the definition* give the context as much effect" in construing that Act as in construing the Act that picks up that definition (emphasis added). But the respondent's arguments in this case did not look to Pt 2 of the Liability Act for guidance on what the definition of "personal injury damages" in s 11 means ("damages that relate to the death of or injury to a person"). The meaning of those words is clear, and the provisions about an "award of personal injury damages" provide no guidance in construing them.

27 Secondly, the respondent's arguments did not take account of the differences in the provisions that each Act made for its own sphere of application. Each Act contained provisions that expressly excluded²³ certain classes of awards or claims from the operation of its provisions. Some, but not all, of the exclusions mirrored each other, with the result that some awards excluded from Pt 2 of the Liability Act would be made following claims for personal injury damages excluded from the operation of Div 9 of Pt 3.2 of the 2004 Legal Profession Act. For example, particular awards of damages for dust diseases under the *Dust Diseases Tribunal Act* 1989 (NSW) were excluded²⁴ from the operation of the Liability Act and claims for those kinds of awards were excluded by s 337(2)(d) from the application of Div 9 of Pt 3.2 of the 2004 Legal Profession Act. But the exclusions which the two Acts made were not identical. Importantly, the Liability Act excluded²⁵ intentional acts done with intent to injure but the 2004 Legal Profession Act did not.

28 The difference in the express exclusions in each Act is important. Because the exclusions are different, each Act is expressly given a *different* area of operation from the other. Yet the fundamental premise for the respondent's submissions was that the two Acts *must* be given the *same* area of operation. The express terms of each Act deny that premise. And, for the reasons already given,

22 (1944) 69 CLR 523 at 536.

23 2004 Legal Profession Act, s 337(2); Liability Act, ss 3B and 11A(1).

24 ss 3B(1)(b) and 11A(1).

25 ss 3B(1)(a) and 11A(1).

the conclusion which the respondent sought to draw from that premise (that the two Acts have an identical area of operation because "personal injury damages" in the 2004 Legal Profession Act was confined to damages the award of which was regulated by Pt 2 of the Liability Act) is not open. Neither s 338(1) of the 2004 Legal Profession Act nor s 11A(1) of the Liability Act affects the meaning that is to be given to the expression "personal injury damages". Each turns on a larger composite expression (award of or claim for "personal injury damages"). None of the provisions that turn on those larger composite expressions affects the sense in which the defined expression "personal injury damages" was used in either Act.

29 Finally, as explained in the Lloyd's Appeals, no legislative "purpose" or "intention" to tie the operation of the costs limiting provisions of the legislative ancestor of the 2004 Legal Profession Act to the scope of application of the Liability Act is to be discerned. The course of legislative history after the first enactment of the Liability Act does not provide a basis for construing the 2004 Legal Profession Act otherwise than according to its terms. That the Liability Act was amended by the Personal Responsibility Act and some years later the 2004 Legal Profession Act was passed separately provides no support for the respondent's construction. Nor was it suggested that any of the amendments made to the Liability Act after the Personal Responsibility Act provided any support for the respondent's construction.

30 For these reasons, in addition to those given in the Lloyd's Appeals, the construction favoured by the Court of Appeal and supported by the respondent should be rejected.

False imprisonment and recovery on a claim for personal injury damages

31 The costs limiting provisions of the 2004 Legal Profession Act are engaged²⁶ where an amount has been "recovered on a claim for personal injury damages". As already explained, "personal injury damages" was defined²⁷ to have the same meaning as in Pt 2 of the Liability Act. And as has already been noted, s 11 of the Liability Act defined "personal injury damages" as "damages that relate to the death of or injury to a person" and "injury" as "personal injury", including "impairment of a person's physical or mental condition".

32 The respondent sued the appellant for trespass to the person (alleging several instances of battery) and false imprisonment. He alleged that the batteries he had suffered had caused him personal injury, but it was far from clear

26 s 338(1).

27 s 337(1).

that he alleged that the wrongful deprivation of his liberty had itself impaired his physical or his mental condition.

33 Often but not always, a battery will cause personal injury to the victim. False imprisonment is often accompanied by an assault and battery and the accompanying battery may (but need not²⁸) cause personal injury. There may be cases where an act of false imprisonment itself causes psychiatric, even physical injury²⁹.

34 Even assuming, however, that the respondent did allege that the act of wrongful imprisonment (as distinct from the batteries he alleged he had suffered) had caused him some personal injury, the claim for false imprisonment was necessarily a claim for damages on account of the deprivation of liberty with any accompanying loss of dignity and harm to reputation. The deprivation of liberty (loss of dignity and harm to reputation) is not an "impairment of a person's physical or mental condition" or otherwise a form of "injury" within s 11 of the Liability Act. The claim for false imprisonment, at least to the extent to which it sought damages for deprivation of liberty, is not a "claim for personal injury damages".

35 The judgment entered in this matter in the District Court did not identify how the damages were computed or on what account they were allowed. On its face, the judgment was consistent with the allowance of damages only for the deprivation of liberty with no allowance for any impairment of the respondent's physical or mental condition. It is not possible to show that the sum which the respondent recovered was "recovered on a claim for personal injury damages". The costs limiting provisions of Div 9 of Pt 3.2 of the 2004 Legal Profession Act were thus not engaged.

Conclusion and orders

36 The Court of Appeal was right to dismiss the appeal to that Court on the basis that the respondent's lump sum settlement was not an amount that had been "recovered on a claim for personal injury damages". The appeal to this Court should accordingly be dismissed with costs.

28 See, for example, *Watson v Marshall and Cade* (1971) 124 CLR 621; [1971] HCA 33.

29 cf *Lowden v Goodrick* (1791) Peake 64 [170 ER 80]; *Pettit v Addington* (1791) Peake 87 [170 ER 89]; McGregor, *McGregor on Damages*, 18th ed (2009) at 1573 [37-014].

37 CRENNAN AND BELL JJ. This appeal was heard with the appeals brought by Certain Lloyd's Underwriters against John Cross, Mark Thelander and Jill Thelander ("the Lloyd's appeals") and these reasons are to be read with our reasons in the Lloyd's appeals.

38 The factual background and procedural history are set out in the reasons of French CJ and Hayne J and need not be repeated. The respondent's claim was found by the primary judge³⁰ (Hall J) and the New South Wales Court of Appeal (Hodgson, Campbell and Macfarlan JJA) not to be within the provision restricting the recovery of party and party costs in certain claims for "personal injury damages" in the *Legal Profession Act* 2004 (NSW)³¹ ("the 2004 LP Act"). The Court of Appeal's holding was made on two bases. First, the respondent's judgment was for a single undifferentiated sum which included claims under heads of damage that were not for personal injury³². Secondly, claims for damages for personal injury caused by an act done with the intention of causing injury or death are not claims for "personal injury damages" for the purposes of s 338(1) of the 2004 LP Act³³. The second basis raises the same question as to the meaning of "personal injury damages" that is addressed in the Lloyd's appeals. It is determinative of this appeal.

39 The Lloyd's appeals concern the cost-capping provisions of Div 5B of Pt 11 of the *Legal Profession Act* 1987 (NSW) ("the 1987 LP Act"). From 6 December 2002, when the relevant provisions of the *Civil Liability Amendment (Personal Responsibility) Act* 2002 (NSW) commenced, the provisions of Div 5B of Pt 11 of the 1987 LP Act became identical to the provisions of Div 9 of Pt 3.2 of Ch 3 of the 2004 LP Act in their application to this appeal. For the reasons given in the Lloyd's appeals, the meaning of "personal injury damages" in s 337(1) of the 2004 LP Act is damages relating to the death of or injury to a person (in the extended way injury is defined in s 11 of the *Civil Liability Act* 2002 (NSW) ("the Liability Act")) to which Pt 2 of the Liability Act applies. The expression does not include a claim for damages for personal injury occasioned by an act done with the intention of causing injury or death³⁴. This conclusion

30 *Williamson v State of New South Wales* (2010) Aust Torts Reports ¶82-055 at 64,124 [85] (2).

31 2004 LP Act, s 338.

32 *State of New South Wales v Williamson* [2011] NSWCA 183 at [2] per Hodgson JA, [68] per Campbell JA, [117] per Macfarlan JA.

33 *State of New South Wales v Williamson* [2011] NSWCA 183 at [4] per Hodgson JA, [27] per Campbell JA, [117] per Macfarlan JA.

34 Liability Act, s 3B(1)(a).

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makes it unnecessary to address the appellant's challenges to the first basis of the Court of Appeal's determination.

Orders

40 The appeal should be dismissed with costs.

41 KIEFEL J. These reasons should be read with my reasons in the Lloyd's
appeals³⁵.

42 The first question raised by this appeal concerns s 337(1) of the *Legal
Profession Act* 2004 (NSW) ("the 2004 *LP Act*"). Section 338(1) of that Act
fixes the maximum costs for legal services provided in connection with a "claim
for personal injury damages" if the amount recovered on the claim does not
exceed \$100,000. Section 337(1) provides that "personal injury damages" has
the same meaning as in Pt 2 of the *Civil Liability Act* 2002 (NSW).

43 Sections 337(1) and 338(1) have their predecessors in ss 198C(1) and
198D(1) of the *Legal Profession Act* 1987 (NSW). These were the subject of the
Lloyd's appeals, as was the *Civil Liability Act* 2002, as amended by the *Civil
Liability Amendment (Personal Responsibility) Act* 2002 (NSW) (referred to
together as "the *Liability Act*").

44 The first question raised in the present proceeding is whether the
definition of "personal injury damages" in the 2004 *LP Act* is informed only by
the definition of that term in s 11 of the *Liability Act*, namely damages that relate
to the death of or injury to a person, or whether it extends to the kinds of awards
to which Pt 2 of the *Liability Act* applies, taking into account the exclusions
effected by ss 11A and 3B(1). Those exclusions extend to awards for damages
respecting injuries caused by an intentional act. The answer to this question is
that the definition of the term for the purposes of the 2004 *LP Act* follows only
from the definition provided in the *Liability Act*, for the reasons given by me in
the Lloyd's appeals. It follows that, for the purposes of the 2004 *LP Act*, a "claim
for personal injury damages" includes one where the injury results from an
intentional act.

45 The second question is whether a claim for personal injury damages
includes a claim for damages for false imprisonment. I agree, for the reasons
given by French CJ and Hayne J, that it does not. It follows that the provisions
of Div 9 of Pt 3.2 of the 2004 *LP Act* are not engaged.

46 I agree with the orders proposed by French CJ and Hayne J.

35 *Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Cross*
[2012] HCA 56.