Personal Responsibility - A*n Australian Perspective*

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In 2001/ 2002, there was considerable movement in Australia towards tort law reform, specifically upon the question of personal responsibility.

The movement was prompted by, or at least gained momentum from, the collapse in Australia of HIH Insurance Group, which had about 22% of the public liability insurance market, and a major medical insurer, the impact of the 11 September 2001 attacks on the global reinsurance market and increasing awards of damages by the Courts.

The increasing awards of damages by the Courts was of even greater concern when coupled with an extremely litigious society composed of many individuals who were not prepared to take responsibility for their own actions. Many saw the balance of responsibility between society and the individual, reflected by tort law and insurance, shifting in an uneasy way.

As a consequence, the Federal Government established a committee to review the law of negligence. The report that was prepared by the committee became known as the "IPP Report".

The IPP Report reviewed the law of negligence and made a number of recommendations. It restated the four distinct components of negligence, namely the probability that harm would occur if care was not taken; the lightly seriousness of the harm; the burden of taking precautions to avoid the harm and, lastly, the social utility of the risk creating activity.

One of the conclusions reached by the IPP Report was that there was an over-emphasis by some Australian Courts of the first of those components, namely the issue of foreseeability.

As a consequence of the recommendations, the State Governments of Australia introduced their own legislation, generally titled or referred to as the Civil Liability Act.

One of the primary functions of the Civil Liability Act was to introduce, or emphasize, the concept of personal responsibility.

Traditionally, an individual was assessed by reference to the reasonable person, the ancient common law principle. However, the new law introduced a statutory consideration for the Courts. Under the new law, a defendant can now only be liable to the extent of its responsibility for the harm.

The movement towards law reform was also motivated by an increasing expectation within the community that individuals would take a greater responsibility for their actions. That expectation increased following a number of well publicized cases.

In *Romeo v Conservation Commission of the Northern Territory (1998) 192 CLR 431*, the High Court of Australia (equivalent to the Supreme Court of the United States of America) held that the claim by Ms Romeo, who was seriously injured when she fell, while drunk, from a cliff in a reserve, should be dismissed. The Court held that the danger was obvious and that the defendants should not have had to warn against obvious dangers. The drunken condition of the plaintiff aroused considerable public concern initially.

Since then, the High Court of Australia has continued to emphasize the importance of individual responsibility, autonomy and choice. The Courts now seem to appreciate one of the conclusions reached in the IPP Report that it was assumed that the law at that time imposed on people too great a burden to take care of others and not enough of a burden to take care of themselves.

The new laws having been introduced, it is unlikely that there will be a reversion to the “old days”. The community still appears to expect a greater element of personal responsibility and whilst that expectation exists, legislators are unlikely to reform existing law.

Ironically, in 2004, Australian insurers enjoyed one of the best levels of profitability that they had had for about 25 years. The return on capital for the insurance industry as a whole was about 23%. That compared with an average return on capital for the previous decade of 11%. The insurance industry no doubt would also discourage any reversion to the “old days”.

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