

# THE TORT LAW REVIEW

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## ARTICLES

**Moving far from the familiar coastline: Proposed amendments to the Trade Practices Act and damages for mental injury – Gillian Dempsey and Clare Cappa**

The Federal Government has recently responded to the Ipp Report by introducing two Bills, the *Trade Practices Amendment (Personal Injuries and Death) Bill 2003* (Cth) and the *Trade Practices Amendment (Personal Injuries and Death) Bill (No 2) 2004* (Cth). The Bills purport to limit access to damages for personal injury and death to claims for misleading conduct. The first part of this article argues that the Bills are subject to lengthy limitation period loopholes and do not remove the scope for damages for disappointment and mental distress. The second part of the article examines the ability to seek remedies under the *Trade Practices Act 1974* (Cth) for mental injury such as disappointment, distress or nervous shock. Early cases that impose constraints from policy considerations and remoteness cannot stand in the light of more recent High Court decisions.....71

**“Who then in law is my neighbour?” Reverting to first principles in the High Court of Australia – Norman Katter**

A trilogy of recent cases before the Full Bench of the High Court of Australia indicate a return to the celebrated statements of Lord Atkin (himself a native of Australia) formulated some 70 years earlier, as the underlying guide in determining whether a duty of care exists in

any circumstance. Whilst various approaches have emerged in the High Court over the past decade involving differing combinations of principle, policy and incremental development, none has proved satisfactory as a general determinant of duty of care in the expanding focus of negligence litigation. This article suggests that the search for a general determinant of the duty issue has finished where it began and that the principle of “neighbourhood” as formulated and intended by Lord Atkin has provided, and will continue to provide, a universal yardstick as to the existence of a prima facie duty of care. ....85

**Discounting damages in an action for wrongful death brought by a surviving spouse – James Sippe**

In *De Sales v Ingrilli* (2002) 212 CLR 338 the High Court of Australia held that it is wrong to apply a separate discount for the possibility a surviving spouse will remarry in assessing damages in a statutory wrongful death action. According to the majority, such a possibility is merely one of the vicissitudes of life and should be allowed for accordingly. The decision marked a significant departure from existing judicial practice. This article looks at the approaches to assessing damages prior to *De Sales*. It then presents some criticisms of those approaches and examines the High Court’s response. Finally, the proposal that the legislation be abolished is considered.....98

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5. Austin, n 4, p 56.

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7. Sheehy et al, n 6 at 221.

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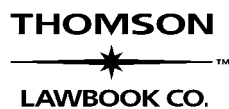
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