

CALCULATING FINANCIAL DEPENDENCY DAMAGES IN WRONGFUL DEATH (DEPENDENCY) CLAIMS

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In a decision of the NSW Court of Appeal in *Norris v Routley; Routley v Norris* [2016] NSWCA 367 (“*Norris*”), the Court was asked to consider an alternative to the dependency percentages set out in Table 9.1 of Professor Luntz’s work, *Assessment of Damages for Personal Injury and Death, 4th Edition* (“the Luntz table”). In that case the Court of Appeal refused to consider the evidence on the basis that it was not appropriate to be introduced on appeal.

The evidence before the Court of Appeal included an affidavit of Professor Luntz indicating that new tables and methodology will replace Table 9.1 in the next edition of his text (yet to be released). The new tables and methodology referred to by Professor Luntz had been advanced in “*Personal Consumption Percentages in Australia - Current Tables*” by Mr Michael J Lee CA, Ms Julia Bossert CA and Mr Corey Plover (“the Lee and Bossert paper”).

The Lee and Bossert paper advanced a methodology (backed by Australian Bureau of Statistics data) based on calculating the personal consumption of the deceased in the context of the household’s income rather than the previously accepted percentages focussing on the financial dependency of the household on the deceased.

The Lee and Bossert methodology is asserted to be more targeted to the individual circumstances of the household and takes into account that fact that the personal consumption of a deceased is likely to be overestimated by the Luntz tables, particularly as the household income increases.

In a WA District Court decision of *Rowe v Rose* [2018] WADC 38 (“*Rowe*”), the *Norris* decision was considered as was the Lee and Bossert paper. The Court rejected the Lee and Bossert paper methodology in *Rowe* and utilised the Luntz table.

We note that both the deceased and his wife in *Rowe* were reliant solely on Centrelink entitlements. The Lee and Bossert paper observes that the lowest of incomes (i.e. under \$800 gross per week) are the least reliable household income brackets upon which to apply the personal consumption methodology for a number of reasons.

As has always been the case, in the event that enough evidence can be presented of the spending habits of a deceased and their household, the tables and methodology would not be required to calculate the dependents’ loss.

On the basis of the analysis in *Norris*, the use of the Luntz table is open to be challenged in the future in favour of the new approach advanced by Lee and Bossert in future negotiations and trials.

The case of *Rowe* can be argued to turn on its own facts and is not binding in other states. We expect to see the Lee and Bossert paper continue to be presented as the appropriate methodology in financial

dependency claims going forward.

In the meantime, we anxiously await the publishing of the fifth edition of Professor Luntz's text, *Assessment of Damages for Personal Injury and Death*.

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