



The New South Wales Bar Association

CTP REFORM: LEGAL ASSISTANCE OUTLAWED, INSURERS WIN, THE INJURED LOSE

By prohibiting motor accident victims from choosing to access legal representation, the proposed CTP system will put all the cards in the hand of the insurer. The most effective way to contain premiums and maintain decent protection for the injured is to retain, but streamline, the current CTP scheme.

Prohibition of Legal Representation in the New Scheme

One of the key elements of the Government's proposed CTP reforms is to prevent lawyers from assisting claimants with statutory claims. The Government plans to specifically prohibit individuals from having the choice to pay for legal advice to assist with their claim. Even if a motor accident victim wants to pay for essential legal advice out of their own pocket they won't be able to.

Removing legal representation ensures that claimants don't recover their full entitlements. The Issues Paper states that legal representation increases the costs of claims (above and beyond the actual legal costs involved). What this really means is that lawyers help their clients recover their proper entitlement to damages. The simple fact is that without proper representation insurance companies can easily take advantage of claimants.

Claimants Will Lose

Each CTP insurer is a commercial entity with an obligation to maximise return to shareholders. The job of a claims officer is to minimise the insurer's expenditure on each and every claim. This means that the insurer will:

- Challenge whether treatment is reasonable and necessary;
- Force the still injured and recovering back to work;
- Argue technical points;
- Contest whether injuries exceed the 10% WPI threshold;
- Make low opening offers in settlement negotiations.

Without legal representation claimants are left on their own to fight experienced claims officers (who often have legal qualifications).

Critical to asserting rights to treatment, lost wages and Whole Person Impairment is having relevant medical evidence. The insurers maintain lists or panels of doctors who they know will give them favourable opinions.

The unrepresented claimant is to be permitted to recover the costs of obtaining their own medical opinion but will unfortunately have no idea which doctor to go to and no idea how to draft or send a letter to extract the necessary information from the doctor to support the claim.

Legal Assistance and the Medical Assessment Service (MAS)

Critical to rights under the new system is whether or not the injured person is over 10% WPI or not. At present CTP insurers prepare lengthy written submissions reviewing medical evidence and legal authority to attempt to persuade the MAS assessor that injuries are not over 10%.

There will be no restriction on an insurer continuing to retain medical and legal experts to draft such submissions, yet claimants will get no assistance to draft any submission of their own. Nor do they get any legal assistance if they are assessed over 10% WPI and find the insurer making complex medical and legal arguments seeking a review.

Claimants will miss out on being assessed over the 10% threshold because they will not be able to properly challenge the insurers in the MAS system.

Statutory Entitlements

Both innocent and at fault claimants may have significant entitlements within the statutory scheme. A motorcyclist with an above the knee amputation would be entitled to a sizable lump sum to cover future treatment (prosthetic expenses). With legal representation they will know to claim for the future costs of prosthetic replacements, a spare or recreational prosthesis and for upkeep and maintenance. Without a lawyer this claimant is going to have no idea how to calculate future entitlement and will inevitably end up settling far too low.

Government Legal Advice system

The proposed scheme offers up the part time services of a CARS assessor as a partial substitute for legal representation. It should be noted that the CARS assessor:

1. May not be legally qualified;
2. May not be truly independent – they could be an ex-claims officer working for the MAA;
3. Isn't ethically obliged to protect the claimant's interests as a lawyer would be.

This is a very poor substitute for legal representation.

Ask yourself this question – if you were injured and needed to negotiate a settlement for past and future treatment and past and future lost wages against an experienced negotiator from an insurance company who had all the knowledge and power on their side, would you want a lawyer on your side?

The only winners from removing the lawyers from the system are insurers and their shareholders. A right to compensation is no real right at all if denied the experienced advice that will be needed to properly exercise the right.

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