

## **Major changes to Compulsory Third Party insurance laws for motor vehicle accident victims**

Unfortunately, when an accident occurs between a car and a motorcycle, it is usually the motorcyclist who comes off second best. Although the compulsory wearing of helmets has assisted in preventing many head injuries, sometimes the impact of the collision is so severe that no amount of protective clothing and equipment will prevent tragic and life-changing injuries and fatalities.

In addition to physical injuries, we often see psychological problems that develop following accidents. Some motorcyclists, once they have had an accident, cannot resume the activity of motorcycling due to anxiety and fear.

The South Australian Compulsory Third Party (CTP) Scheme is a scheme that provides personal injury compensation to eligible people injured in accidents involving a motor vehicle (including a motorcycle). Each motor vehicle registration payment has a component allocated to fund the scheme.

The laws of negligence in South Australia are the same for both car drivers and motorcyclists. Currently, a motorcyclist is able to claim compensation through the Motor Accident Commission provided that he or she was involved in an accident which can be entirely or partially blamed on another party. The injured person will have to show that they have been affected by their injuries for at least seven days.

This means that under the current system, if a driver or motorcyclist in a single vehicle collision sustains an injury, he or she would likely be ineligible for compensation because they won't be able to prove someone else was at fault. This is the case even if they sustain catastrophic injuries, including severe brain or spinal injuries.

Our current CTP scheme has worked well since 1963. Part of the registration fee we pay is designed to financially protect a driver or motorcyclist if they cause injury to someone else, but also to compensate a victim if they suffer injuries or economic loss.

However, the South Australian Government has recently reviewed the CTP scheme due to claims that the scheme has become too expensive, inefficient and unfair.

As our current system is based on fault, many victims of road accidents are not eligible for compensation because no other driver was involved in the collision. However, one of the most positive proposed changes to the scheme involves moving to a no-fault system.

As Premier Weatherill recently stated:

*"People who currently are not covered by CTP insurance when they suffer catastrophic injuries in single vehicle accidents will be covered. At the moment, that is about 40% of catastrophically injured road accident victims each year who are not covered because no-one is at fault."*

However, when the changes to the scheme were first announced, there were some aspects that were not so positive. The initial proposals were designed to significantly cut costs, and therefore had the effect of slashing compensation for victims. It had been estimated that approximately 6,000 people involved in road accidents each year would lose eligibility for compensation under the initial proposed changes to the scheme.

Following some intense lobbying from key stakeholders, the Government has made some important concessions in relation to the proposed amendments. We are pleased that the Government has listened to the concerns of those who regularly work with road accident victims, and the Government has agreed to some substantial improvements in victims' rights.

In addition to the positive changes affecting people who suffer severe injuries (including the establishment of a lifetime support scheme), the changes go some way towards retaining protection for victims who suffer less serious injuries.

There will still be some erosion of victims' rights, which is unfortunate. Currently, as long

as the injured person can show someone was at fault and that they have been affected by their injuries for at least 7 days, they can claim some compensation for pain and suffering, even if the pain and suffering is minimal.

Under the new scheme, eligibility to claim for pain and suffering (ie, non-economic loss), voluntary services and loss of consortium (ie, how the injury has affected a family relationship) will be based on a new scale. This scale did not exist under the current scheme.

To be eligible, the injured person must be above 10 points on the Injury Severity Value scale (ISV). This is an improvement from the initial proposal which recommended at least 15 points.

Unfortunately, this still means that some people who suffer injuries, including perhaps a broken arm or whiplash, may not be eligible for certain types of compensation. The former Treasurer Jack Snelling MP has justified the changes by stating:

*"Minor claims have burdened the system, with more than \$100 million a year going to claimants who may have little or no time off work and require little medical treatment".*

We are yet to see these changes in practice, but we still feel it is unfortunate that many people who suffer minor injuries involving pain and suffering will be ineligible for compensation. As we know, what may initially seem like a minor whiplash injury could affect a person for the rest of their life.

Furthermore, the threshold for claiming for loss or impairment of future earning capacity will be lowered from above 15 points on the proposed ISV Scale to above 7 points. This is an improvement compared to the initial draft amendments, but may still adversely affect victims who suffer less serious injuries.

There are also changes to the way legal fees can be recovered. As you know, engaging a lawyer is often a necessary but costly exercise. The proposed changes mean that many legal costs will not be recoverable if the claim for compensation is less than \$25,000.

This will mean, for example, that if a victim suffers minor injuries and is only eligible for a \$20,000 claim, they will have to pay their own legal fees. This may deter victims from seeking legal advice, because of the risk that they may have to pay their own legal fees.

The changes are a bit of a mixed bag for motorcyclists. On the one hand, it is very good news that motorcyclists involved in a single vehicle injury will now have an opportunity, in many circumstances, to claim compensation. This was previously unavailable. However, let's say a motorcyclist collides with a car and the car driver was responsible for the accident. If the motorcyclist only sustains a broken wrist, it is unlikely that they would be eligible for compensation under the new scheme however, they may have been entitled under the existing scheme.

There are several other proposed changes to the CTP scheme that will affect car drivers and motorcyclists. However, the changes still need to pass Parliament. The Government does not have the numbers in the Upper House of our State Parliament to ensure smooth passage of the amendments. They will need to rely on the support of some Independents to pass the laws. There may be further changes still to come.

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