

ACT motor accidents claims

guidelines




As many APLA members will be aware, recovery of damages for personal injury sustained in the Australian Capital Territory as a result of a motor vehicle accident is governed by the common law. The Australian Capital Territory is not subject to either regulation by a statutory authority or legislative manipulation of damages awards as occurs in other jurisdictions. Another unique component of the Australian Capital Territory scheme is that there is currently only one third party insurer, namely NRMA Insurance.

Part of the ongoing process of ensuring that the system works for the benefit of motor accident victims has been the development of a set of Motor Accident Claims Guidelines. These Guidelines arose out of negotiations that were conducted between the ACT Law Society and NRMA Insurance. The object of the Guidelines is to provide a practical framework within which claims can be speedily and efficiently handled by both parties, to the benefit of claimants, their legal advisers and the NRMA. The provisions came into effect on 22 November 1999. The Guidelines are aimed at improving the current scheme and providing for its continued operation in the Australian Capital Territory.

The Guidelines deal with early notification, provision of particulars, arrangements for admission of breach of duty of care, rehabilitation, medical reports, medico-legal appointments, offers of settlement, resolution of cost disputes following settlement or judgment and complaints arising out of the application of the Guidelines. Of relevance to the theme of the current edition of *Plaintiff* are the provisions relating to when an Insurer may make direct contact with a represented claimant and the framework created for the attempted negotiated settlement of a claim.

Prior to the implementation of the Guidelines some claimants were subject to direct contact initiated by the insurer. The circumstances in which the insurer can initiate such contact have now been formalised in the Guidelines. In effect, contact will only occur in limited circumstances. When a third party claim is lodged the insurer will send an initial standard letter to the claimant explaining the claims process and encouraging the claimant to keep in contact with his or her solicitor. Other than the receipt of this initial letter, contact will occur directly between the insurer and the claimant only where there is a breakdown in communication. When an insurer forwards an offer of settlement or necessary consent forms for the purposes of a medico-legal appointment that has been arranged they are able to request a response within 28 days. If no response is received by the solicitor acting for the claimant a second letter may issue with a further time period for a response, failing which the insurer may then write directly to the claimant.

In relation to settlement negotiations, the Guidelines provide that where an offer of settlement is made a response should be provided within 28 days. The Guidelines effectively require that the response should be in writing and include an acceptance or rejection of the offer, a counter-offer or, where no counter-offer is made, the reasons why no counter-offer is made.

The Guidelines have now been in effect for 12 months. It is anticipated that the effectiveness of the Guidelines in creating an effective settlement framework for unlitigated motor vehicle accident personal injury claims will shortly be reviewed and evaluated by both the Law Society and NRMA Insurance. 

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