



# The trouble with no-fault compensation

By Tom Goudkamp

**C**arr's 'Softer Line' on Accident Victims'. No, you aren't dreaming. This was the front page headline of the *Sydney Morning Herald* on 10 February 2005, the day after Mr Carr boasted that his government's tort law reform had ensured that injured people like Guy Swain would never be able to win such a 'pot of gold' again.

The premier, in response to mounting criticism that his government's slashing and burning of the compensation rights of innocent accident victims had gone too far, announced his intention to introduce a no-fault scheme to cover the lifetime costs of care for catastrophically injured accident victims.

In the absence of specific details, I can only assume that these proposals will resemble the no-fault scheme being developed by the Motor Accidents Authority (MAA) to provide long-term care for catastrophically injured road accident victims.

Those who qualify for MAA assistance, whether or not they can prove negligence, would have their care guaranteed by the MAA for life. But many questions remain, including:

- Who will decide whether the injuries qualify as 'catastrophic'?

- What standard of care will be provided?
- Who will decide whether a particular regime of care is appropriate?
- Will the care regime be tailored to victims' individual needs (for example, will it include the cost of registered nurses, occupational therapists, case managers, etc)?
- Will there be any allowance for the recurring cost of equipment (for example, wheelchairs and medical supplies), and the increased costs of accommodation, transport, holidays, etc?

A no-fault scheme for long-term care sounds quite reasonable until you realise that it will inevitably diminish the compensation rights of those accident victims who can prove fault. All victims will receive the same, lowest common denominator compensation for care, irrespective of negligence. The Australian Lawyers Alliance opposes no-fault schemes for this reason: we believe that the law has a moral and educative function in terms of both deterring wrongdoing and penalising those found guilty of it.

A no-fault scheme could see people with catastrophic injuries end up on pensions in nursing homes for the rest of their lives. Current compensation for long-term care allows people in these

tragic circumstances to maintain some level of dignity by managing their own care in their own homes with their families. The standard of care afforded by the proposed system is likely to be based on a welfare model, providing the lowest possible standard of care.

A similar system operating in New Zealand for many years now has seen taxpayers pick up the bill, with the injured experiencing declining standards of care and forced on to weekly payments of as little as \$65 per week.

These schemes are extremely expensive to run and it's impossible to predict how big the liability will be.

In the absence of the full details of any proposed no-fault scheme and assurances that it will not be funded at the expense of negligently injured accident victims, the Australian Lawyers Alliance will continue to oppose a no-fault scheme. ■

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