

30 October 2008

Insurance law – E-Alert

Gratuitous Care Assessment Bill passed

Further to our E-Alert dated 24 October 2008 reporting on the *Civil Liability Legislation Amendment Bill 2008*.

The Bill amends the *Civil Liability Act 2002*, the *Motor Accidents Act 1988* and the *Motor Accidents Compensation Act 1999* to make it clear that “damages are to be awarded for gratuitous attendant care services only if the services are provided (or to be provided) for at least 6 hours per week and for at least 6 consecutive months.” The amendment extends to liabilities that arose before the commencement of the amendment but does not apply to proceedings determined before that commencement. It overcomes the NSW Court of Appeal decision in *Harrison v. Melhem*.

On 29 October 2008, both the NSW Legislative Assembly and the Legislative Council, passed the Bill and it now awaits commencement. We now have access to the legislation. The relevant provisions are:

“Motor Accidents Compensation Act 1999 No 41

Section 128 Damages for economic loss – maximum amount for provision of certain attendant care services

Omit section 128 (3). Insert instead:

(3) Further, no compensation is to be awarded unless the services are provided (or to be provided):

- (a) for at least 6 hours per week, and
- (b) for a period of at least 6 consecutive months”.

The Bill provides for the retrospective operation to which we referred in the previous E-Alert:

“Restrictions on compensation for attendant care services

An amendment made to this Act by the *Civil Liability Legislation Amendment Act 2008* extends to liability arising, and to proceedings commenced, before the commencement of the amendment, but does not apply to any proceedings determined before that commencement”.

We expect that the Bill will be proclaimed to commence in the near future.

For further information please contact:

Michael Inger , Senior Associate	02 9391 3184
Victor Kelly , Partner	02 9391 3216
Fiona Hornsby , Partner	02 9391 3205
Linda Hamilton , Partner	02 9391 3112
Justine Matthews , Partner	02 4925 5500

Sydney (City & North West) | Melbourne | Brisbane | Adelaide | Perth | Hobart | Darwin | Newcastle | Shanghai

Disclaimer: The information contained in this e-alert is not advice and should not be relied upon as legal advice. Hunt & Hunt recommends that if you have a matter that is legal, or has legal implications, you consult with your legal adviser. If you no longer wish to receive this e-alert or any other publication from Hunt & Hunt, please email us at unsubscribe@hunthunt.com.au