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Insurance Law E-alert

Further change to principles for assessment of damages for gratuitous care

Our earlier Insurance E-alert (6 June 2008) reported on the NSW Court of Appeal decision in the matter of *Harrison -v- Melhem [2008] NSW CA 67 (29 May 2008)*. The Court of Appeal interpreted section 15(3) of the *Civil Liability Act 2002* and section 128(3) of the *Motor Accidents Compensation Act* disjunctively; in that a plaintiff needed only to overcome one of the two threshold tests by showing, either that the gratuitous services were provided for a long period; i.e. more than six months; or, that the services were provided for specified number of hours per week i.e., more than six hours per week, to be entitled to damages for gratuitous care.

The Civil Liability Legislation Amendment Bill 2008, when enacted, will reject the Court of Appeal's disjunctive interpretation of the two threshold tests for a plaintiff to be entitled to gratuitous care damages. The intended amendments to the *Civil Liability Act 2002*, *Motor Accidents Compensation Act 1999* and *Motor Accidents Act 1988* make it clear that such damages are to be awarded only if the services are provided (or to be provided) for at least six hours per week, and for a period of at least six months.

The amendment will extend to liabilities that arose before the commencement of the amendment, but does not apply to proceedings determined before that commencement; i.e., it has wide retrospective application.

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