

Comments on the draft Injury Claim Form and Fatality Claim Form

Submission to the CTP Regulator

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to comment on the draft Injury Claim Form and the draft Fatality Claim Form.

Draft Injury Claim Form

Legal Representation

2. The claim form should make it clear that the claimant is entitled to obtain legal advice with respect to completing the form and making a claim. On the front of the form it states that the CTP insurer of the at-fault vehicle can be contacted for help with completing the form. The insurer is in a conflict situation, in that they are acting for the at-fault driver and not for the injured person. It is important that claimants are advised that they can seek legal advice. The front of the form would be a good place for this.
3. At the end of the claim form the claimant is required to sign a declaration. The potential penalty is a fine of up to \$50,000.00 or imprisonment for up to one year. The severe consequences of a form filled in incorrectly highlights the need for the claimants to be advised that they can seek legal advice.
4. The only mention of obtaining assistance on the form (other than from the CTP insurer of the at fault vehicle) is in the schedule 1 statement giving authority to obtain information. This states that you can seek advice, at your own expense, before signing this authority. It does not make it clear that you can seek legal advice, or that legal fees are covered or partially covered for claims over \$25,000.00.

Question 11

5. Question 11 asks for the claimant to advise whether they were retained by a law practice to act for them in relation to this claim and if yes, to give details of the person who referred them and how. The purpose of the form is to provide the insurer with relevant information on how the claimant was injured, the extent of their injuries, their likely losses and need for treatment. The question of how they were referred to a particular law firm is completely irrelevant to this purpose.
6. This question has the capacity to undermine a claimant's right to legal representation and the privileged discussions that occur between a client and their lawyer.

7. It is not appropriate that the insurers are provided with information on why clients are choosing particular law firms. This is a private matter between the client and their lawyer.
8. We note that the likely intention of question 11 is to try and identify potential fraudulent claims, in particular claims that come about due to the practice of claims farming. However we point out that claims farming is not a significant problem in South Australia at the moment and the practice is not illegal. Claims farming can and should be dealt with by the conduct rules for solicitors. Claims farming also does not mean that a claimant's injuries are not genuine and deserving of compensation.
9. Fraudulent claims can be dealt with in a number of ways, in particular by the penalties imposed for signing a false declaration, namely a \$50,000.00 fine or imprisonment for 1 year.
10. The ALA is of the very firm view that question 11 should be removed from the form. If it is not removed, at the very least it should be made very clear that this is an optional question and does not need to be answered.

The Accident

11. In relation to question 32, we note that the example diagram has been removed. We think the diagram is helpful to give claimants an example of how to draw the accident. We are also interested to see how the diagram can be drawn with an online form.

Injuries and Treatment

12. In relation to question 42, there is only one line to complete the injuries from the accident. This is in contrast to questions that relate to previous injuries which have 4 times the space. Whilst it may expand to give greater room to complete when filling the form in online, it needs to be larger for any claimants that print the form to complete.
13. It would also be appropriate for question 42 to make it clear that all injuries should be listed. Claimants sometimes list only the more severe injuries and neglect to list everything. This can become an issue later if they have left something off that continues to be an ongoing problem.
14. In relation to question 47 we are concerned that this question will be difficult and confusing for claimants to answer.

Economic Loss

15. In relation to economic loss, often claimants may continue doing their normal duties but do so with increased pain or by having to take medication to enable them to do this. This is often not sustainable. A question should be added to the effect that “if you have not stopped work due to your injuries, do you suffer from any physical or mental restrictions which make your work more difficult to perform”. This question could be added in after question 49.

Prescribed Authority

16. ALA is concerned about the prescribed authority and the fact that the words indicating that the authority may be revoked after the expiry of six months from the execution of the authority have been removed. ALA strongly urges that this be added back into the form.

Medical Certificate

17. In relation to the medical certificate, this should not be compulsory. The current system of being able to provide alternative medical evidence, such as a discharge summary or similar should be able to be continued. It can often be difficult to get a GP to complete the form. Where injuries are severe and there is alternative evidence available, the focus of GP / specialist appointments is better spent on treatment rather than completing the form.

18. The proposed medical certificate is also likely to be difficult for claimants to have completed by GPs. A functional ability assessment is onerous to be completed and GPs are already reluctant to take on patients with CTP claims. We are concerned that if this form is a requirement, more GPs will refuse to take on CTP claims.

19. The functional ability assessment will only be required in some matters and not all matters. It should only be used for relevant claims. If this was an optional form, it could be used where necessary.

Draft Fatality Claim Form

General

20. On the front page of the form it states that you must answer all of the questions on this form. There are many questions throughout the form that a dependent completing the form will not know. This is especially so for dependents that were not involved in the accident. They cannot answer questions about what occurred. They will generally be relying upon what they have been told by police.

21. It is important that the front page be amended to make it clear that they only need to answer the questions that they know the answers to.
22. The claim form also states that it needs to be returned within 6 months. It then contains a list of documents that must be included, including proof of income of the deceased and income of the dependents.
23. It is often overwhelming for dependents to complete this form and provide all of these documents immediately after a fatality. The checklist could be amended to state “where available” for the proof of income of the deceased and dependants.

Legal Representation

24. We refer to our comments in relation to legal representation for the draft CTP Claim Form above and reiterate paragraphs 2 - 4.

Question 10

25. We refer to our comments in relation to question 11 of the draft CTP Claim Form and reiterate paragraphs 5 to 10.

Death Certificate

26. Question 17 should ask for the death certificate number and a copy of the death certificate “where available”.

Accident

27. The form requires a significant level of detail in relation to the accident, including a description of the accident and a diagram. All fatal car accidents are investigated by police. Providing this level of detail about the accident is extremely traumatic for the dependents. It is unnecessary because the police report and file will provide the information. In the majority of collisions, the dependents were not in the accident and so cannot complete the information from their own knowledge.
28. If this level of detail is deemed necessary for the claim form, it should be made clear that it only be completed if the dependent was at the accident scene or involved in the accident.
29. For dependents not involved in the accident, they should only be required to provide sufficient detail to enable the insurer to identify the correct accident, ie date, location, parties involved (if known), police report number.

Employment and Income of deceased

30. Often the dependent will not have full details of the deceased's earnings at the time of completion of the form. A note should be added that they only need to fill out as much as they can.

Conclusion

31. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the draft form. The ALA is available to assist with the further drafting of the form if required. We are also happy to meet to discuss our submissions in person.



Sarah Vinall

SA President

Australian Lawyers Alliance