



NEWSLETTER

Coode & Corry Solicitors

MEDICAL CRISIS—WHAT IS IT ALL ABOUT ?

The medical negligence crisis is a complicated question for which there are no simple answers. The negligence laws and the ways that they have recently been changed is one part of the puzzle.

Set out here is a short summary of some of the changes to the laws in regard to medical negligence . However a major problem seems to be that the savings from these changes to the law are not going to be enjoyed either by the doctors or the community:

Firstly it will be harder to establish that a doctor was negligent because the test to be applied has been made stricter. Even if negligence is proven the court has been given a discretion to decide that it is not “appropriate” for the doctor to be held liable for his/her negligence

Secondly if negligence is established the type and size of the damages that may be awarded has been restricted. For instance a patient is not entitled to anything at all for pain & suffering unless it was so bad that they would receive more than a specified amount of damages. Currently the threshold is set at \$52,500 in NSW. A patient who was in pain from an untreated infection for say 6 months would probably not be entitled to more than the threshold amount so they would not get anything at all for their pain & suffering.

Thirdly limits have been placed on the way that the patients lost wages

are to be calculated , both in terms of past and future wage loss claims.

Lastly there have been a series of other changes making it



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harder to bring a claim :

eg where the complaint is that the doctor failed to warn the patient of the risks involved with an operation,

or which are aimed at reducing the size of any claim :

eg limiting claims where nursing services are provided by a relative or spouse on a voluntary basis to the injured person.

Clearly the end result will be that there will be a large reduction in both the number and the size of claims However it is also pretty clear that we cannot expect any of the savings to be passed onto doctors or the patients and it seems that the insurer will be the only winners .

DEPOSIT BONDS

In a recent case an insurance company that had issued deposit bonds for use in the purchase of real estate tried to avoid having to pay out when the

purchaser failed to complete , even though that is the very purpose for which people buy Deposit Bonds.

If the argument raised by the insurance

company had succeeded ,it would have made it difficult for any vendor to claim on a deposit bond.

Fortunately the court adopted the view that so long as the vendor makes their demand for payment in accordance with the terms of the Bond the issuer of the bond should then automatically pay the guaranteed amount to the vendor without requiring the vendor to prove anything other than that the purchaser has failed to complete the purchase of the property .

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- *Stephen Corry*

BUILDING CONTRACTORS PAYMENTS NEW LAWS SET STRICT TIME LIMITS

New laws have been passed which attempt to help builders and other subcontractors obtain payment of their progress payments from the head contractor.

The basic idea is that by setting strict time limits for making claims, responding to claims, etc the process could be made to work better. Strict time limits are a two edged sword because whilst they move a claim along quickly they can create problems if a deadline is missed.

For example section 14 of the *Construction Industry Security of Payments Act* states that anyone who receives a claim that a payment is due must within 10 days respond to the claim setting out a proposed payment timetable and/or set out the reasons why the payment (or part of it) is not due and payable.

A failure to do this within 10 days means the recipient of the claim is deemed to have conceded that the amount claimed is in fact due and they are prevented from disputing the claim. The claimant can then immediately proceed to obtain a court order for the amount claimed and then enforce that order.

Even if the recipient responds in writing (and in time) disputing all, or part, of the claim they have to set out the reasons why they say the money is not payable. They are then prevented from raising any reason or defence other than those they included in their original written response.

Accordingly if the Response does not include all possible reasons or defence that the recipient wants to rely upon they will be prevented from raising those missing reasons when

the validity of the claim is adjudicated upon.

Clearly therefore it is important to ensure that:

- The claim includes all possible amounts,
- The response is given within 10 days and,
- The response sets out all the possible reasons for refusing the payment.

All parties need to be careful when preparing a claim/response otherwise they will be caught by the time limits and will not be able to later fix the problems. The courts are likely to enforce these time limits strictly.

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