

General Liability

Emerging Talent Series (Part 4)



Shaping the future of insurance law

Quantum Regimes by State

20 May 2021

SUMMARY PACK

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RESOURCES

Video recording of the session:

<https://vimeo.com/552735284/3ef19668a2>

Presentation slides:

Click [here](#)

Other W+K articles and insights:

<https://www.wottonkearney.com.au/knowledge-hub/>

FEEDBACK & QUESTIONS WELCOME!

We welcome any feedback you may have on the presentation materials or format of our Emerging Talent Series. If you have any feedback or further questions, please don't hesitate to **email one of our presenters**.

QUANTUM REGIMES by STATE

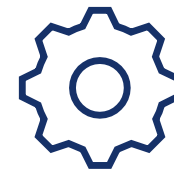
UNDERSTANDING the SIMILARITIES
and DIFFERENCES when ASSESSING
PERSONAL INJURY DAMAGES ACROSS
A U S T R A L I A



SUMMARY PACKS

- Session 1 – Policy Interpretation - View [here](#)
- Session 2 – Procedural Differences - View [here](#)
- Session 3 – Key Issues and Jurisdictional Nuances - View [here](#)

Key takeaways



- The states vary greatly when it comes to General Damages - as you can see from the example in our poll, the range was nearly \$200,000.
 - Penny Plaintiff wants to be injured in Victoria;
 - Insurers want Penny Plaintiff to be injured in Queensland.
- Get the records and evidence to help support your assessment. Check whether your plaintiff is a participant in the NDIS.
- Economic loss is consistent across the states:
 - Past Economic Loss universally limited to 3 times the average weekly earnings;
 - Multipliers and reduction for vicissitudes.
- Gratuitous care has different thresholds which need to be met:
 - NSW and Queensland have the same threshold – 6 hours per week for 6 months.

Would you please share some wording for indemnity against NDIS to add to our Releases?

Examples of provisions can include:

- The Settlement Sum is inclusive of any amount the Releasee is required to pay to:
 - Medicare Australia (under the *Health and Other Services (Compensation) Act 1995* (Cth));
 - the Department of Social Security (under the *Social Security Act 1991* (Cth));
 - the National Disability Insurance Agency (under the *National Disability Insurance Scheme Act 2013* (Cth));
 - pursuant to any other Commonwealth or State legislation as a result of this settlement;
 - any private health insurer; and
 - the Releasor will indemnify the Releasee in respect of any liability because of these obligations (if any).
- The Releasor will continually indemnify the Releasee against any liability it has or may have pursuant to the provisions of any Commonwealth or State legislation or any liability arising under the *Health and Other Services (Compensation) Act 1995* (Cth), the *Social Security Act 1991* (Cth), the *National Disability Insurance Scheme Act 2013* (Cth) and/or to any private insurer as a result of this Settlement.



What is the success rate of claimants before the Medical Panel? Occasionally, I have seen claimants fail to prove their case at the Medical Panel, but it seems to be quite rare.

Based on the figures we keep at W+K:

- 90.52% of psychiatric referrals did not exceed the threshold of more than 10% psychiatric whole person impaired (WPI); and
- 32.71% of physical referrals did not exceed the threshold of more than 5% permanent physical WPI.

Are there any caps on the claimant's costs in Western Australia?

In WA, the only constraints on the amount of costs that a successful plaintiff can seek is the maximum allowable under the costs scales which are applicable for each jurisdiction (Magistrates Court, District Court and Supreme Court). These are indexed every 2 years. The costs scales are quite generous, but they do provide caps on certain events, either by way of monetary caps or time-related caps. The scales also apply to counsel's fees. In some limited circumstances, a Court may make an order that the scale limits do not apply.

There may also be costs orders made throughout the proceedings, which can include an order for indemnity costs (i.e. where a party is ordered to pay the total amount of a successful party's legal costs, without regard to the scale). Thankfully, these orders are very rare, particularly in the District Court where the majority of personal injury actions are heard.

Polling results

Penny Plaintiff is a 40 year old nurse who on 1 January 2020, tripped walking down a set of stairs and broke her left ankle, resulting in a 10% WPI.

Penny required surgery for her ankle and could not work for 3 months. She required help from her husband with everyday household tasks such as cleaning and gardening.

As a result of being off work, Penny developed symptoms of depression. She was diagnosed with an adjustment disorder with mixed anxiety and depressed mood. She can no longer pursue her passion for ballroom dancing and there is a risk she may develop arthritis in her ankle in the future.

What is Penny's entitlement to General Damages?

- A. \$25,000 – correct answer in QLD
- B. \$50,000 – correct answer in WA
- C. \$160,000 – correct answer in NSW
- D. \$220,000 – correct answer in VIC



Polling results

So what does the future hold for Penny Plaintiff? After receiving compensation for her injuries, Penny Plaintiff:

- A. Gradually returns to work and takes up Sudoku
- B. Commences visualisation meditation to overcome her fear of stairs
- C. Starts watching where she places her feet when walking down the street
- D. Can now help her husband more with chores around the house (which he is very happy about)
- E. Moves to Victoria to maximise her damages for any future claim for personal injury damages
- F. All of the above



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