What is gratuitous care?

Gratuitous care refers to services which are provided to an accident victim without payment and include services of a domestic nature, services relating to nursing and services that aim to alleviate the consequences of an injury.

Gratuitous care as a category (or “head”) of damages in common law compensation emerged from the 1977 case of *Griffiths v Kerkemeyer*. In that case, the High Court decided that compensation could be awarded in respect of the injured person’s need for care and assistance even if that need was met gratuitously by relatives or friends at no cost to the claimant.

Gratuitous care claims are fewer in number than general damages claims, but damages for gratuitous care can be significant in larger claims. According to a report by Trowbridge Consulting in 2002, damages claimed for gratuitous care accounted for about 25 per cent of claims over $500,000.

Damages for gratuitous care have been criticised as sometimes excessive, particularly given the fact that the plaintiff suffers no actual financial loss.

The Ipp Report and its recommendations

The Review of the Law of Negligence, the report of a panel chaired by Justice David Ipp, examined possible reforms to negligence law in response to the insurance crisis.

The panel’s report, released in September 2002, outlined a number of recommendations to reform the principles of common law negligence, with the overarching aim of reducing claims to increase the profitability of insurance companies.

In all, the report handed down 61 recommendations. Recommendation 51 related to gratuitous care.

As a result of the Ipp Report's recommendations a number of changes were made to State and Territory law, including a cap and threshold on awards for gratuitous care, with the exception of Tasmania (where damages for gratuitous care had already been abolished by statute).

The Ipp Report's recommendations were that:

- No damages may be awarded unless the court is satisfied that there was a reasonable need for the services to be provided, that the need arose solely because of the injury and that the services would not have been provided to the plaintiff but for the injury.

- No damages may be awarded unless the services are provided for both six hours or more per week and for at least six months.

- The maximum award for damages where the services are provided for 40 hours per week or more is contemporary average weekly earnings.

- The hourly rate for calculating award for gratuitous care where services are provided for 40 hours per week or less is current average weekly earnings divided by 40.
Thresholds and caps around the nation

These are examples of some of the restrictions that currently apply to gratuitous care claims in the various States and Territories.

**NSW** – (Motor Vehicle Claims) No entitlement to damages for gratuitous care if services are provided for less than six hours per week and for less than six months, with a cap of payment for 40 hours per week and a dollar value of average weekly earnings.

**Qld** – (Motor Vehicle Claims) Threshold of six hours per week for at least six months post accident before damages are recoverable. Damages are not to be awarded for gratuitous services if they are of the same kind being provided for the injured person before the date of the accident.

**SA** – (Motor Vehicle Claims) Four times the average weekly earnings according to the Civil Liability Act 1936.

**WA** – (Public Liability Claims) Cap based on average weekly earnings. $5,000 is deductible.

**Law Council’s stance**

Restricting access to claims for gratuitous care services will diminish some people’s rights to fair and appropriate compensation. Restrictions will cause financial hardship for accident victims as well as the families of injured people. Restrictions will be a disincentive for families to provide care and take leave from paid employment to provide assistance to injured family members, such as seriously injured children.

**Want to know more?**

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