



Hard road for CTP fraud

Courts move to tougher penalties

With courts taking a harder line on CTP insurance fraud, **Glen Cranny** and **Callan Lloyd** look at the lessons to be learnt by both plaintiff and defendant lawyers.



Recent cases have shown a trend towards increased penalties for those who commit insurance fraud against compulsory third party (CTP) insurers, highlighting the importance of accuracy and honesty in such claims.

MAIC and CTP offences

The Motor Accident Insurance Commission (MAIC) is the statutory authority responsible for the ongoing management of Queensland's CTP insurance scheme. MAIC's functions include the development and coordination of strategies to identify and combat CTP fraud. In this capacity, MAIC criminally prosecutes those who make false claims. Criminal proceedings are taken summarily and are conducted pursuant to the *Justices Act 1886*.

The *Motor Accident Insurance Act 1994* (the MAI Act) creates MAIC and Queensland's CTP insurance scheme. The Act provides for different offences that may be committed in the course of a CTP claim, such as:

1. Section 87T – Offences involving fraud

An offence against s87T occurs where a person defrauds or deliberately misleads either MAIC, the Nominal Defendant, or a CTP insurer; or where a person attempts to do so. The maximum penalty for such offending is 18 months' imprisonment or a fine of 400 penalty units (presently \$48,760).

2. Section 87U – False or misleading information or documents

This offence arises where a person makes a false statement, or provides a false document, to either MAIC, the Nominal Defendant, or a CTP insurer. The maximum penalty for such offence is 12 months' imprisonment or a fine of 150 penalty units (presently \$18,285).

Recent case law

Sentences for offences under the MAI Act have been historically 'light on' in contrast to similar offending under WorkCover legislation or the *Criminal Code* – in years past it was not uncommon for fines to be imposed for dishonesty offences under the MAI Act.

The recent trend of increasing penalties suggests a diminishing tolerance for CTP insurance fraud, even in instances where the dishonesty simply involves the exaggeration of an otherwise genuine claim. The courts have recognised that insurance fraud has a wide and detrimental public impact, contributing to increased insurance premiums for all motor vehicle owners, and the consequent need for sentences which reflect a need for general deterrence. It can be expected too that such developments will encourage insurers to refer suspicious cases to MAIC for prosecution.

Recent case examples include:

Singleton v Murupaenga, Townsville Magistrates Court, July 2014

Murupaenga pleaded guilty to a single offence of attempted fraud contrary to s87T. She was involved in a motor vehicle accident and misrepresented the extent that her injuries had on her ability to work. There was an extensive period of offending, spanning two years, and at its highest her CTP claim was for around \$800,000. It was accepted that part of the defendant's claim was meritorious; her attempted fraud was

characterised by embellishing an otherwise legitimate claim. The CTP claim proceeded to trial, however that was abandoned after covert recordings of the claimant's activities were played during her cross-examination.

For her offending, Murupaenga was sentenced to six months' imprisonment, wholly suspended for an operational period of two years. She was ordered to pay almost \$13,000 in costs (and at that time, had an outstanding costs order against her from the civil proceedings which exceeded \$160,000).

Singleton v Cole, Brisbane Magistrates Court, February 2015

Cole was convicted after trial of one count of deliberately misleading an insurer contrary to s87T. In the course of her CTP claim she misrepresented the extent of her injuries, and their impact on her ability to work. She failed to disclose that throughout the course of her claim she was running a small business. Her claim exceeded \$800,000.

Cole was sentenced to 15 months' imprisonment, with an order she be paroled after four months of actual imprisonment. She was ordered to pay in excess of \$30,000 in costs.

Singleton v Ward, Townsville Magistrates Court, June 2015

Ward was charged with an offence of attempted fraud under s87T. In the course of her CTP claim, she claimed that she was unemployed, and unemployable, as a result of her injuries. She made various misrepresentations to medical practitioners about the extent of her injuries and symptoms. Her total insurance claim exceeded \$800,000.

Surveillance conducted on her activities revealed her working on multiple occasions, in contradiction to her claimed incapacity. The matter proceeded to trial following which Ward was found guilty.

Magistrate Smid determined that a term of imprisonment was the only suitable penalty, despite the fact that she had been genuinely injured in her accident, and (but for her dishonesty) would have been entitled to a much more significant compensation payment than she received. Ward was sentenced to two months' imprisonment, wholly suspended for nine months, and was ordered to pay costs of more than \$15,000.

Lessons for lawyers

A review of these and similar cases provides some lessons for both plaintiff and defendant lawyers alike.

It goes without saying that plaintiff solicitors should warn their clients in CTP claims that there are serious penalties – criminal as well as civil – for false or misleading behaviour in the course of their claim. Particular attention should be paid to advising clients against the temptation to inflate or exaggerate an otherwise legitimate claim.

Past cases demonstrate that discussions with medical practitioners, and claims made within statements of loss and damage, are fertile areas for false representations. With insurers commonly retaining surveillance operatives to investigate suspicious cases, plaintiff lawyers should be specifically advising their clients in this regard.

In matters in which a solicitor has cause to suspect a claim is false or embellished, that suspicion must not be ignored. As with all litigation, practitioners must exercise their own forensic judgment and not act as a 'mere mouthpiece' for the client.

Accordingly, client instructions should be considered dispassionately for their accuracy, and a claimant should be thoroughly questioned in relation to areas of concern. In extreme cases, plaintiff solicitors who assist in a false or embellished claim may attract their own criminal liability for conniving in an offence.

Those acting for insurers also play a significant role in the detection of fraudulent claims. While the MAI Act provides for a range of enforcement and investigatory powers (for example, search warrants and/or the seizure of evidence), those who engage in CTP offending are regularly caught out as a result of the prudent work by defendant lawyers.

Evidence obtained in the course of defending a CTP claim is generally crucial to a successful prosecution. This commonly takes the form of surveillance evidence commissioned by the insurer or its lawyers – still one of the most powerful types of evidence in this sort of case.

Furthermore, in instances where suspicions arise, defendant lawyers should consider requiring the claimant to provide details of their claim pursuant to s45 of the MAI Act, which provides for an insurer to require a claimant to verify information by way of a statutory declaration.

Not only might such a requirement give a dishonest claimant cause to reconsider the wisdom of continuing their claim, such a statement also assists in any subsequent criminal prosecution under the MAI Act, making it difficult if not impossible for a defendant (claimant) to later suggest they were mistaken or ignorant about the truth of matters claimed.

Concluding remarks

Offences committed in the course of CTP claims are serious, and the penalties for engaging in such action are increasing. Both plaintiff and defendant lawyers can play their part to reduce the prevalence of such offending. Knowing the CTP prosecution landscape will assist lawyers to pursue and protect their clients' interests in this evolving area of law.

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