



**Information for clients**

**MOTOR VEHICLE ACCIDENTS  
(COMPULSORY THIRD PARTY CLAIMS)**

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FOR OBLIGATION FREE LEGAL ADVICE**

## **MOTOR VEHICLE ACCIDENTS (COMPULSORY THIRD PARTY CLAIMS)**

If you have been injured as a result of a road accident, you are entitled to receive compensation (i.e. damages) if you can prove that the accident was caused by the fault of a driver of a motor vehicle (car, truck, motor cycle, bus) even if the identity of that vehicle is unknown (e.g. hit and run) and even if you were partly responsible for the accident yourself. You can also seek compensation if it was a blameless accident.

The amount of compensation you will receive will depend on:

- (a) The severity of your injuries and the extent to which they restrict your normal lifestyle.
- (b) Whether you have suffered and/or are likely to suffer loss of income (e.g. wages, job opportunities).
- (c) The extent of the medical treatment you have received and are likely to need in the future.
- d) Whether your injuries are so bad that you need help/care in the home and/or assistance with transport.

If you were partly responsible for the accident the amount of compensation you receive will be reduced by the level of your responsibility (e.g. 50% your fault means a 50% reduction in compensation.)

### **Initial Procedure for making a CTP claim**

The accident must be reported to the Police within 28 days of the accident. Failure to do so could defeat the claim.

A completed Personal Injury claim form must be given to the Green Slip insurer of the motor vehicle which caused the accident within 6 months of the date of accident (otherwise a full and satisfactory explanation must be given to the insurer, for the delay).

There are several Green Slip insurers. The identity of the relevant insurer can be ascertained by phoning the Motor Accident Authority of NSW on 1300 656 919, quoting the details of the vehicle that caused the accident, including the registration number, the make and model of the vehicle, the date of the accident, and if possible the name of the owner.

The Personal Injury claim form contains a medical certificate. This must be completed by a doctor and accompany the claim form when it is sent to the insurer.

If the identity of the vehicle at fault is unknown (e.g. hit and run) or there is no Green Slip insurance (i.e. the motor vehicle is unregistered) the claim is brought against the Nominal Defendant, care of the Motor Accidents Authority of NSW, Level 22, 80 George Street, Sydney (Phone 1300 137131). If the claim is brought against the Nominal Defendant because the identity of the vehicle is unknown, you must conduct due enquiry and search to try and ascertain the identity of the vehicle, before you can make a claim.

## **What the insurer must do after it receives the claim form**

1. Make a decision as to whether or not to accept liability, within 3 months after it has received the claim form. The insurer may admit liability, deny liability altogether or admit liability but allege that you contributed to the accident (i.e. contributory negligence). If the insurer denies liability or makes an allegation of contributory negligence, the insurer is required to give reasons as to why it has come to that decision.
2. Once liability has been admitted, wholly or in part, pay your ongoing reasonable and necessary medical expenses, as incurred. In serious cases, pay for care provided on a commercial basis, home and transport modifications etc. Note the insurer does not have to pay your lost wages/income.

## **What we will do**

If we act for you we will;

1. Obtain the Police, ambulance, hospital and doctors' reports.
2. Send you a typed copy of the statement we will obtain from you at our initial meeting.
3. If appropriate, arrange for you to be medically assessed by one or more specialists, to provide opinions as to the severity of your injuries, the long term prognosis and outlook, your ability to work, your need for further medical treatment or surgery, your need for domestic and/or attendant care etc.
4. Pay for the medical reports, hospital records, ambulance records, Police report and any other reports we need to prepare your case.
5. If appropriate (in major claims), obtain reports from non-medical experts (e.g. architect, occupational therapist. If liability is denied by the insurer we may engage a traffic engineer to provide a report.
6. Give you ample written notice of all appointments arranged for you to attend. Please note that in most cases it will be necessary for you to take with you to the appointments all your x-rays, MRI studies, CT scans etc.
7. Provide the doctors who will be assessing you on a medico-legal basis with all relevant medical reports and records and information
8. Monitor your situation and arrange to see you from time to time to obtain updated information and discuss the claim with you generally.
9. Obtain proof of any claim for loss of income or income earning potential and in appropriate cases engage an accountant to prepare an economic loss report.
10. Keep you informed as to the progress of your claim by reporting to you on a

regular basis.

11. If liability is denied, view the scene of the accident so we can see it for ourselves.
12. When the time is right, after we have obtained all the evidence, and your injuries have stabilised and we know the long term prognosis as to your medical condition and needs, arrange a settlement conference with the insurance company.
13. Prepare a detailed assessment of damages (compensation) to discuss with you prior to arranging the settlement conference.
14. Try to negotiate a settlement of your claim.
15. If your case is not settled, take your case to the next step either an assessment or Court.

### **What the insurer is likely to do**

The insurer is likely to;

1. Appoint an investigator to take a statement from you. Generally we do not allow insurers or their investigators to interview our clients, particularly if liability (i.e. fault) is an issue in the case.
2. Arrange for you to be medically assessed by its own medico-legal specialists.
3. If liability has been admitted, pay your ongoing medical expenses, although insurers often do not conduct themselves as they should.
4. Make a decision on liability (see above).
5. Once your injuries have stabilised, concede or refuse to concede that your injuries constitute a greater than 10% permanent impairment of your whole body, being the necessary gateway to compensation for pain and suffering (non-economic loss), and make an offer of settlement.

### **What you will need to do**

1. Attend all medical appointments arranged for you, and co-operate with doctors who have been asked to assess you, whether they be doctors appointed by us or by the insurer or by the Motor Accidents Authority
2. Keep us informed of your medical condition, progress, employment situation, change of address and change of circumstances. There is no need to phone us on a regular basis. Rather you should make a note of all the changes and bring us up to date at our regular meetings or pre-arranged phone conferences.
3. Forward all accounts, receipts, invoices etc in relation to medical expenses, including physiotherapy expenses, to us in the self addressed, stamped envelopes provided, so that we can apply to the insurer for a refund for any payments you have made and also so we can prepare a schedule of your claim for medical expenses to present to the insurance company and/or to the assessor/Court in due course.

4. Behave normally e.g. if you can return to work, you should, provided your doctor certifies you to be fit to return to work.
5. If you claim loss of income or income earning potential forward copies of your tax returns for the 3 years prior to the accident, copies of any job references or any other material which will assist us in proving your pre-accident earnings and earning potential.

Remember, the onus is on you (by us) to prove every aspect of your claim, on the balance of probabilities. The insurance company does not have to prove anything except the extent to which you may have been responsible for the accident.

## **What compensation will you receive?**

### **1. Non-economic loss**

This is compensation for pain and suffering, loss of enjoyment of life, loss of amenities etc.

You will only receive compensation for non-economic loss if the insurance company agrees or your injuries are formally assessed by a specially appointed doctor(s) that your injuries constitute a greater than 10% whole person permanent impairment (WPI). The assessment of WPI is made according to special guidelines developed by the Motor Accidents Authority.

Once the insurer has agreed or your injuries have been assessed that the WPI exceeds the greater than 10% threshold permanent impairment becomes almost irrelevant. In its place disabilities, restrictions, pain, changes to lifestyle etc are taken into account.

### **2. Past and future medical expenses**

These are the medical expenses you have incurred from the date of the accident because of your injuries and for as long as you will need medical treatment in the future.

### **3. Loss of income**

If you were working at the time of the accident or if you had the potential to earn income and your injuries have stopped you from working or from realising your potential you are entitled to claim the loss of income e.g. wages.

The claim includes loss of income or income earning potential from the date of the accident and for as long as your injuries will continue to affect your ability to work.

### **4. Care**

If your injuries are so severe that you require care and assistance from family/friends etc on a voluntary basis you are entitled to receive compensation for that

care, provided the care is given for at least 6 months and for at least 6 hours per week. Whether or not you will need care in the future will depend on the opinions of the doctors who will be examining you in due course. In most cases the claim for future care is made on the basis that the care will be provided by a commercial/professional carer.

## 5. **Home and transport modification**

In extremely serious cases where the injuries affect mobility claims will be made for the increased costs of housing and transport.

### **How is compensation paid?**

Compensation will be paid in a once and for all lump sum, which will be tax free.

### **How long will your case take?**

This depends on the severity of the injuries and the type of claim. Your claim will not be finalised until your injuries have stabilised and a long term prognosis can be made. Most claims should take less than 2 years.

If the injuries stabilise reasonably quickly and a long term prognosis can be made, your claim can be finalised more quickly.

### **Will the case have to go to Court?**

Probably not. Over 85% of cases settle without going to Court. In fact most claims settle without Court proceedings even being commenced.

If liability has been admitted by the insurance company it is likely that your claim, if not settled, will be assessed by an assessor appointed by the Motor Accidents Authority.

### **What time limits apply?**

Notice of your claim should be provided to the Green Slip insurer of the vehicle at fault within 6 months of the date of the accident. The accident must be reported to the Police within 28 days.

Court proceedings should be commenced within 3 years of the date of the accident. There are however exceptions and provisions for extensions of time. Generally speaking however unless court proceedings are commenced within 3 years of the date of the accident you will need to apply to the District Court for leave (i.e. permission) to commence court proceedings.

Court proceedings cannot be commenced unless the Motor Accidents Authority issues a special certificate.

### **Who pays the legal costs?**

If your claim is successful the insurance company will pay most of the legal costs. You will pay the difference between what the insurance company has to pay and the actual costs. As a rule of thumb the difference is about one third.

We will pay all the disbursements (e.g. fees for medical reports) and be reimbursed at the end of the case.

In the unlikely event that your case is lost we will not charge any fees or seek reimbursement of disbursements. The insurance company may however seek to recover its costs from you.

### **Will we charge a percentage of the outcome?**

No. This is illegal.

We will be paid for the work that we do. The law requires us to enter into a fee agreement with you as soon as practicable after you have instructed us to act for you.

### **How often will you hear from us?**

We will write to you and see you from time to time.

There will be ample opportunity for us to discuss your case with you, to obtain updates and to explain procedure, progress and the likely outcome as your claim progresses.

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## **NO-FAULT BENEFITS UP TO \$5,000.**

All persons who are injured as a result of a motor vehicle accident are now entitled to up to \$5,000 of compensation for medical expenses and loss of income, on a no-fault basis. This means that even if you were the driver at fault, you can still claim up to \$5,000 of compensation for these items.

In order to access the no-fault benefits it is necessary to lodge an Accident Notification Form (ANF) within 28 days of the date of the accident. The ANF must be lodged with one of the CTP insurers of the vehicles that was involved in the accident.

It is still necessary to follow all of the claim procedures outlined above if you are making a claim for more than \$5,000 in compensation.

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## **BLAMELESS COMPENSATION**

Children under the age of 16 who are injured in road accidents have special entitlements to claim compensation regardless of whether they can prove that someone else was responsible for the accident. In most cases, children are entitled to claim compensation for their medical and rehabilitation expenses and care costs on a no-fault basis.

It is still necessary to be able to prove that the driver of a motor vehicle was at fault in order to be able to claim compensation for other items such as pain and suffering and loss of income.

In some circumstances it is also possible for adults to recover compensation for an accident even if it is a no fault or “blameless” accident.

These no-fault cases must follow all the procedural requirements outlined above including lodging a Personal Injury Claim Form within 6 months of the date of the accident, and commencing Court Proceedings within 3 years of the date of the accident.

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## **LIFETIME CARE AND SUPPORT SCHEME**

If you are injured in a road accident after 1 October 2007 and the injuries that you sustain in the accident are very severe, you may become a participant in the Lifetime Care and Support Scheme (the LTCS). The LTCS operates on a no-fault basis, meaning that you will be entitled to receive benefits under the scheme even if you cannot prove that someone else was responsible for the accident.

The following injuries may qualify for eligibility into the LTCS, depending on the severity of the injuries:

- Brain damage.
- Spinal cord injury.
- Multiple amputations.
- Severe burns.
- Blindness.

There is no time limit for becoming a participant in the LTCS scheme although usually eligible people will be accepted into the scheme quite quickly, often while still in hospital.

If you become a participant in the LTCS, the LTCS Authority will pay for all your treatment and care needs for as long as you remain a participant in the scheme. Your eligibility for the scheme may be reviewed within 2 years of the date of the accident. At that time if you have made a good recovery you may be discharged from the scheme. Alternatively, you may be accepted as a lifetime participant in the scheme.

If you are discharged from the scheme then you will be entitled to claim compensation for your treatment and care needs as part of your CTP claim (if you are able to prove that another vehicle was responsible for the accident). If you are accepted as a lifetime participant in the LTCS scheme then the LTCS Authority will continue paying for your treatment and care needs for the rest of your life, and you will not be able to claim for these items under your CTP claim.