

# MOTOR VEHICLE CLAIMS

## FREQUENTLY ASKED QUESTIONS

We hope that during our discussions we were able to answer your most pressing concerns. It has been our experience that people in your position normally appreciate receiving some follow-up information about bringing a claim and we trust that this document will assist in that regard.

### **1. Does the person who caused the accident have to pay?**

The plaintiff (claimant) is the person making the claim (you), and the defendant (respondent), as the term suggests, defends (responds to) the claim. Many people think that the person who caused the accident actually defends the action and pays the compensation. This is not so. If they are insured, their CTP insurance company (premium paid with every registration of a vehicle) will cover the cost of appointing solicitors to defend your action, and if you are successful, it is the insurance company who pays the compensation - not them personally.

All drivers of vehicles are automatically covered by insurance for personal injuries that have been suffered by others so long as the vehicle they were driving was registered at the time of the accident.

If the vehicle was not registered at the time of the accident, there is a government insurer called the Nominal Defendant that acts as an insurance company. In some circumstances, the Nominal Defendant will try to get the money from the person who caused the accident.

The CTP insurance scheme is for personal injuries only and not for the property damage caused to any vehicle. If there is property damage as well then the vehicle will need to be covered for that under a different insurance policy. If they are not covered under an insurance policy then they will be held personally liable for the damage they have caused.

### **2. How much compensation are you going to get?**

In assessing your damages, the court and our firm as your solicitors will look to the following things:-

- How much pain you have suffered in the past or are likely to suffer in the future, and the effects of your injuries on your life generally (although this may sound like it is worth a considerable amount, it is calculated under the Civil Liability Act and Regulation and may not be as much as you were hoping);
- How much money you have lost in income in the past and are likely to lose in the future;
- How much money you have spent on medical services and rehabilitation, pharmaceuticals, treatment etc;
- What assistance you have obtained from other people whilst recovering from your injuries;
- Any refunds you will have to pay, eg to Medicare, Centrelink, hospitals, WorkCover, etc;

- Any future costs you may have for treatment, medications, surgery etc.

These are the principal **heads of damage** on which the court assesses your claim. We are sometimes not able to give you any idea how much your claim is worth until later in the progress of your action, as we need to assess lots of different information.

### 3. Will you have to go to court?

Many motor vehicle accident cases settle out of court, although sometimes not until the day of the trial. In circumstances where it is unclear who or what caused the accident (ie we must prove someone else has been legally negligent), or it is difficult to determine how much compensation you should receive, we have to be ready to go to court if it becomes necessary. There is no need for this to concern you. We are extremely skilled and experienced in this type of litigation, so let us take care of it for you.

### 4. How long will it take?

We will carry out some preliminary investigations into the circumstances of your injury to determine if we think you have good prospects of being successful in your claim. We then have to lodge important forms with the relevant insurer. The first form that needs to be lodged is the **Notice of Accident Claim Form**. This form is lodged with the CTP insurer of the vehicle that caused the accident. It is necessary for you to sign this form before we can lodge it with the insurer, and we will often ask you to do this at the first meeting.

If the accident has not been reported to the police, you will have to notify them prior to the CTP insurer having to accept your claim form.

Once we have lodged the **Notice of Accident Claim Form**, it may be necessary for us to lodge a second form with the insurer known as an **Additional Information Form**. This form allows the insurer to have more in-depth knowledge of the accident and your injury.

After we have had a response from the insurer advising whether the claim form is completed correctly and comply with the *Motor Accident Insurance Act 1994*, we are then forced by law to wait six (6) months before they provide their liability response. This delay is out of our control. However, after this six (6) month period, negotiations and conferences are often carried out with the insurance company and quite often cases can be settled without the need to start a court action. If this does not happen, once we are able to commence the court process, we expect it to take no longer than twelve (12) to eighteen (18) months but there may be delays within the court system that place the matter out of our control. However we will do everything within our power to ensure as prompt a settlement as possible.

### 5. What do you need to do?

If you have not already seen a general practitioner in relation to the injuries caused by the motor vehicle accident, you must do so in order for us to get a medical certificate signed by your doctor. This will need to be done within twenty-eight (28) days of consulting a solicitor in relation to bringing a claim. This medical certificate must be in a particular form which is contained in the **Notice of Accident Claim Form**, which we will provide to you.

We need you to provide us with information so that we can transform it into the proper format to get the best result in your particular claim. Unless we have this information from you, we cannot do our job.

As well as providing us with your verbal instructions, we need you to:-

- Attend on doctors at our request (what expert evidence we will require depends on the nature of your claim and injury). This generally occurs 12 months after your accident, allowing time for your injuries to stabilise;
- Provide us with your past taxation and employment information if your claim involves loss of income;
- Provide us with details of who you have received medical treatment or rehabilitation from including the cost of that treatment;
- Let us know who you worked for in the past or who you are working for now, if your claim involves economic loss;
- Sign and return documents to us as promptly as possible;
- Advise us if you change address, phone number or email address;
- Advise us of any change in your employment;
- Advise us of any change in your circumstances, such as further medical treatment or other injuries;
- Keep written records for us on the schedules we have provided you;
- Authorise us to deal with different organisations on your behalf such as Medicare, Centrelink, WorkCover or your doctors.

It is our job to make sure that we comply with the court rules and the *Motor Accident Insurance Act* to ensure your action is run as quickly and efficiently as possible. However, we need to work closely with you to obtain the best result for you.

The Rules of Court (Uniform Civil Procedure Rules 1999) set down time limits for things to happen. It is important to comply with these time limits, or the other side could apply to the court, which can result in extra costs you may be liable to pay. If you answer us quickly when we need something from you, this should not be a concern.

## **6. What do you need to pay out of your compensation?**

If we are successful in getting compensation for you, there are certain entities that you will have to repay from your compensation. The first thing is that your legal fees will have to be paid from your compensation, as well as outlays such as barrister's fees, medical reports, etc, that we have paid on your behalf throughout your claim. This has been set out in our client agreement.

Next, it is compulsory that you refund money to certain government departments or organisations if they have been used. These include:-

- The Commonwealth Rehabilitation Service (DEEWR);
- Centrelink (if you have been in receipt of or commence receipt of any benefits at all from Centrelink since the accident);
- Public and private hospitals (if you have been treated by one for your injuries);

- Private health insurance (if you have it and it has paid for some of your medical treatment);
- Medicare (if they have paid for any of your medical treatment);
- Child Support Agency (if you are a paying parent and have a Child Support debt owing);
- Emergency services (if they were involved in transporting you).

It is important that you are aware that you will have to repay any amounts funded on your behalf from these entities, and for you to advise us if you fit into any of these categories so that we make the appropriate enquiries before your case either settles or goes to court.

Another question people commonly ask is whether they have to declare their compensation as income and pay tax on it. At the current time, the only circumstance in which you would have to pay tax is if your claim actually goes to trial and the judge awards you compensation plus interest. You will have to pay tax on the interest component only. If your claim settles out of court, you will not have to pay any tax on your compensation at all.

## 7. What happens before the court process starts?

Before we can start your claim we need to take a comprehensive statement from you, get the police accident report and carry out motor vehicle registration searches to work out who to sue, obtain and look at doctors' reports, sometimes investigate the scene where the accident happened, possibly obtain an expert's opinion, and interview witnesses if there are any.

As we explained to you during our meeting, we will lodge a **Notice of Accident Claim Form** with the compulsory third party insurance company of the vehicle which caused the accident (within one month of our meeting with you). This must be accompanied by a signed medical certificate setting out your injuries and recommended treatment. It is very important that your doctor includes all injuries aches and pains as well as any adverse psychological reaction to the crash. The medical certificate is page 7 of the **Notice of Accident Claim Form** and we will provide this to you.

We may have to later lodge an **Additional Information Form**, depending upon the nature and severity of your injuries - this is at the option of the insurance company.

Whilst this is being arranged, we will request medical records from the hospitals or doctors who are treating you, so that we have evidence to give to the insurance company. In some cases the insurer will get these records themselves. We may not necessarily be in touch with you whilst we are carrying out these investigations, however, you can be sure that we will be busily working on your behalf. We will also arrange appointments for you to be independently examined by specialists for the purpose of providing medico-legal reports in support of your claim.

If you have any documents at all which relate to your claim, you should let us have them as soon as possible. We will send you a letter explaining your obligations to disclose documents. It is essential you retain any documents and records relating to your claim. Indeed, should we start a court claim for you for this injury, you are legally obliged to provide such documents to the other side.

Once we have lodged the claim form with the insurance company, they have six (6) months to undertake their investigations and to provide their liability response. Negotiations to try to settle your claim without

having to go to court will occur with the insurance company once all evidence supporting your claim has been received.

We have to have a compulsory conference with the insurance company to attempt to settle the claim. It will be necessary for you to attend this conference.

If we are unable to settle your claim during this period or at the conference, we then have the option to commence court proceedings within 60 days of the compulsory conference. We would notify you if we were considering doing this. Most cases settle before reaching this stage, but it is impossible for us to predict at this stage whether your case will fall into this category.

## **8. What happens in the court process?**

### **(a) Issuing Proceedings**

To start your claim, we must file two documents, called a **Claim** and **Statement of Claim**, in the Court. We must then serve a copy of this document on the insurance company.

### **(b) Statement of Loss and Damage**

After the insurance company has been served, the defendant's solicitors will be required to file a **Defence** within 28 days. The next important document to be delivered by us is called a **Statement of Loss and Damage**. We prepare this on your behalf as soon as we have all the information we need. It is a comprehensive document that outlines the effects your injuries have had on every aspect of your life. To prepare this document, we need your past employment details, your present employment details, the amount of money you have spent with doctors and hospitals, etc and, if necessary, who has rendered you voluntary services during your convalescence. We will have already obtained this information prior to the compulsory conference, but there may be updated information that we need from you. We will continually need you to update us on your current status.

### **(c) Disclosure**

Another step under the Court Rules is called "disclosure". This means all parties must file a **List of Documents** which sets out all the documents in their possession which relate to the claim.

### **(d) Interrogatories**

Sometimes you are required to answer written questions delivered by the other party. You reply by way of a written answer which gets filed in the court. We draft those answers in the appropriate form according to your instructions. This step has a time limit, which is set by the judge. It is important that we comply with this time limit. We are also able to interrogate the other side if we think it is necessary for your case.

### **(e) Alternate Dispute Resolution**

Usually prior to a trial the parties attend a mediation which is similar to the compulsory conference but with an independent third party there as well. The mediation is held on a "without prejudice" basis - these conferences are known as alternate dispute resolution. It is a useful step to attempt to

settle your claim, but it does not happen in every case. Anything said in mediation will be completely confidential.

**(f) Entry of Trial**

Once the **Request for Trial Date** court document has been signed, your matter can be entered for trial. This means that it is placed on the waiting list on the court's diary (callover list) and eventually will be allocated a date for trial. Sometimes your matter can stay on the callover list for a number of months waiting for a suitable date for trial.

**(g) Trial**

If your matter does not settle during any of the preceding steps, it will need to be determined by a Judge after a trial has been heard. This is when all the evidence is put before the court and the Judge then decides the outcome.

## **9. Additional Information**

**(a) Costs**

Costs have been explained to you and are also set out in the client agreement. We will act on your behalf on a speculative basis, that is, we will investigate, free of charge, whether or not we think you will have a claim. In the event that you do not have a claim, there will be no charge made to you whatsoever. Many firms will charge outlays however we specifically do not under our client agreement.

If we are of the opinion that you do have a claim, we will charge you at the conclusion of your matter but only if you have been successful. Again, if you are unsuccessful, there will be no charge to you for our legal services.

It is impossible at this stage to predict how much your total costs will be. However, we have structured our client agreement so that we will limit our fees in certain circumstances to ensure that you will not be left out of pocket at the end of the claim. This would have been explained to you at our initial meeting and is detailed in Clause 7 of the Terms & Conditions. If you have any queries about this clause, please feel free to contact us.

**(b) Doctors' Appointments**

As mentioned previously, independent doctors are very important in any personal injuries matter. Their opinions are highly regarded by the court. It is important that when we arrange appointments for you with doctors you attend the appointments. Some doctors charge a missed appointment fee if you do not attend on the allocated date. The other side will often require you to attend an appointment with one or more doctors of their choosing. This is a normal part of the process and is nothing for you to be concerned about.

**(c) Engaging Experts**

In some motor vehicle cases, it will be necessary for us to engage a safety expert to inspect the place where your accident happened, or the vehicles involved. We must be able to prove legally that the other driver was at fault for the collision, and we may need expert assistance for this. This

is an expensive process, but it is often unavoidable as we need evidence to negotiate with the other side or to convince a Judge.

**(d) Surveillance**

Some defendants engage private investigators to conduct surveillance on litigants. This may happen to you. You should have nothing to fear or worry about if you have not exaggerated your injuries. You may indeed notice a surveillance van in your vicinity. Do not approach this van or act in an antagonistic manner. This will only raise suspicion in the minds of the defendant's solicitors. Please advise us if you suspect you are under surveillance.

**(e) Significant Changes**

It is important that you let us know if you experience a change in your condition, whether it be good or bad. It is very important that we know this type of thing so that we can properly prepare your claim. Similarly, if you experience any other significant changes, such as your employment situation or your address, you should let us know as soon as possible.

**(f) Delays**

Sometimes your matter may be delayed, either because:

- it is sitting on a callover list waiting for a court date, or
- we have to take the matter before the court prior to trial to force the other party to obey time limits, or
- we are waiting for you to attend at a doctor's appointment or obtain a doctor's report or records; or
- your injuries need to stabilise before being assessed.

These delays are unavoidable however you can rest assured that we will be doing everything we can to keep your claim progressing as quickly as possible.

**(g) Tactics and Strategies**

We advise you not to discuss your case with anyone other than perhaps your spouse or very close members of your family. It is to your advantage not to discuss the circumstances of your claim with other people, so that no rumours get started about your claim. If at any time you are concerned about your case, or do not understand any step which has been taken, telephone us and we will listen and explain the issue to you.

**(h) Diaries**

We suggest that you keep a diary. In the diary we would like you to record how you are feeling with respect to your injuries. Often you will be under surveillance and will not even know it. If you are, you may, for example, be seen to be mowing the lawn. It may be that you can mow the lawn but you are in extreme pain in the days afterwards. This type of information we would like you to record. Also, we would appreciate it if you would record details of all employment applied for by you together with the results of the applications.

## **10. What happens now?**

As you proceed through this process of litigation, each step will become clearer when you see it in written form. You will get used to the amount of detail we require to prepare your case properly.

If you have any queries once you have read this information sheet, please do not hesitate to contact the person who is handling your file. From time to time, we will be in contact with you to let you know what stage of the process we are at. However, if you have any questions at any time at all, we encourage you to contact us so we can put your mind at ease.