

## MOTOR VEHICLE ACCIDENTS AND THE LAW

This article will outline the process of making a claim and obtaining compensation through the Compulsory Third Party (CTP) scheme if you have been injured in a motor vehicle accident.

Due to a reform in December 2017, the type of compensation and the process for receiving it is different depending on when the accident occurred. Both processes will be discussed and explained below.



### **A. INITIAL PROCEDURES**

If you have been injured in a motor vehicle accident, the initial steps to take include:

1. Taking down the registration number (licence plate) of the vehicle that caused the accident;
2. Reporting the accident to the police (if they did not attend the scene) and obtaining the police event number;
3. Finding out the vehicle's Compulsory Third Party (CTP) insurer (you can check this through Service NSW by entering the vehicle's licence plate number); and
4. Submitting an 'Accident Notification Form' (ANF) to the CTP insurer.

You may initially be able to obtain up to \$5,000.00 for treatment of injuries and loss of income for the first six months of the accident by lodging the ANF. This applies to anyone injured in a motor vehicle accident, regardless of whether they were at fault or not.

For accidents before 1 December 2017, generally those who were not the driver at fault can obtain compensation for benefits such as treatment and loss of income. There are some benefits for those who were partly at fault, and minimal claim for those who were at fault.

After 1 December 2017, anyone can make a claim for personal injury compensation (regardless of whether they were at fault or not).

### **B. ACCIDENTS BEFORE 1 DECEMBER 2017**

If you were not at fault for the accident, you may be able to claim compensation for:

- Medical treatment and rehabilitation;
- Loss of income (including future income);
- Pain and suffering (non-economic loss);
- Financial hardship; and
- Death of a relative.

Claims are made by completing a 'Personal Injury Claim' form and submitting it to the insurer of the driver at fault within six months of the accident.

The insurer would then assess the claim and if accepted, pay or compensate expenses as necessary. After further investigation, the insurer would provide a final settlement offer to cover all expenses involved (including future loss).



### C. ACCIDENTS AFTER 1 DECEMBER 2017

The *Motor Accident Injuries Act 2017* (NSW) commencing on 1 December 2017 introduced a new scheme for obtaining CTP benefits, replacing the *Motor Accidents Compensation Act 1999* (NSW).

Under this new scheme, the type of compensation you can receive has been separated into 'statutory benefits' and 'common law damages'.

#### C.1. STATUTORY BENEFITS

Also known as 'personal injury benefits', this involves receiving weekly payments of income (if you are unable to work due to the accident), and medical and rehabilitation expenses for the first six months after the accident.

These benefits can be received by anyone injured in an accident regardless of who was at fault.<sup>1</sup>

However, income support payments only last for the first six months, and can only continue if you were not at fault in the accident and your injuries are not considered "minor" (defined as a soft tissue injury or minor psychological injury).<sup>2</sup> The maximum time you can receive these benefits is two years (unless your claim with the insurer is ongoing).<sup>3</sup>

Other benefits you can claim (where reasonable and necessary) include:

- Cost of treatment and care;
- Travel and accommodation expenses for obtaining treatment; and
- Loss of capacity to provide domestic services (eg cost of employing someone to provide domestic services if you have young children).<sup>4</sup>

In order to receive these benefits, you would need to show evidence that you are unfit to work and proof of the medical expenses or treatments you are claiming (ie receipts or invoices). This involves providing a 'Certificate of Fitness' to the insurer (completed by your GP or treating doctor).

A claim to begin receiving statutory benefits must be made within three months from the accident (and ideally within 28 days).

An application for statutory benefits can be made online through the State Insurance Regulatory Authority (SIRA) online claim portal (accessible via Service NSW). Alternatively, you can complete the 'Application for personal injury benefits' form and submit it to the insurer by email or post.

#### C.2. COMMON LAW DAMAGES

Also known as 'lump sum compensation', this applies to people who have suffered a major injury from the accident and were not at fault. An application is made to the insurer of the person at-fault in the accident, and after investigating your claim, the insurer will offer you a final settlement amount.

The timing of making this application depends on whether your injuries are considered 10% or less Whole Person Impairment (WPI). A determination of WPI generally depends on any impairments that may last for the rest of the injured person's life as a result of the accident.

If it is found that your injuries are above 10% WPI, you can make your claim for damages at any time after the accident and within three years. If your injuries are under 10% WPI, the claim for damages can only be made for 20 months after the accident (and within three years). Since WPI refers to permanent impairments, the assessment is made after you have had some time to recover and receive treatment.

Damages can be awarded for both economic loss and non-economic loss.<sup>5</sup>

Economic loss can be claimed for the following:

- Past or future loss of earnings or impairment of earning capacity;<sup>6</sup>
- Costs of accommodation or travel for obtaining treatment or care; and
- Costs of financial management of damages.

<sup>1</sup> *Motor Accident Injuries Act 2017* (NSW) s 3.2.

<sup>2</sup> *Ibid* ss 1.6 & 3.11.

<sup>3</sup> *Ibid* s 3.12

<sup>4</sup> *Ibid* ss 3.24 & 3.26.

<sup>5</sup> *Ibid* s 4.3.

<sup>6</sup> *Ibid* s 4.6.



Non-economic loss can only be claimed by people who have over 10% WPI, and includes:

- Pain and suffering caused by the accident and resulting injuries;
- Loss of amenities of life;
- Reduced life expectancy; and
- Disfigurement.<sup>7</sup>

**D. WHAT NEXT?**

After you have made your application for statutory benefits and / or common law damages, you would eventually receive an offer from the insurer with a weekly benefit amount or settlement amount.

If you do not agree with the amount offered by the insurer or any decision made by the insurer, you can request for an internal review and a different claims officer will assess your case and make an independent decision. You must apply for an internal review within 28 days of the decision.

If there are still disagreements, you may lodge a dispute against the insurer through the State Insurance Regulatory Authority's (SIRA's) Dispute Resolution Service (by application online or sent by email or post). If it is still unresolved, you may elevate the issue to court proceedings (must be within three years of the accident).<sup>8</sup>

<sup>7</sup> *Ibid* s 1.4.

<sup>8</sup> *Ibid* s 6.32.

Comasters Law Firm can assist clients in making claims under the CTP scheme.

**CONTACT US**