

PUBLIC LIABILITY 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 claimant is the person making the claim (you), and the defendant (respondent), as the term suggests, defends 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 insurance company 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.

The only circumstance when they will have to pay anything out of their own pockets is if there is no insurance. If this occurs, we will advise you, as it may complicate your action and it could be very difficult to recover any compensation from them personally. In those circumstances either the firm or you may choose to vacate the action. The only effect that your claim will have, in most circumstances, is that the person who was responsible may have to pay a higher insurance premium.

2. How much compensation are you going to get?

In assessing your damages, the court and the 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 usually 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 prior to being able to quantify your claim. Plus each claim is assessed on the specific personal circumstances of the plaintiff and not on the injury sustained (ie a finger is not worth \$X).

3. Will you have to go to court?

Many public liability 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 if 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 everything 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 parties involved in the action. The form we lodge for you is called a **Part 1 Notice of Claim**. This form is lodged with the person or persons that caused your injuries. Short time limits for lodging this form will not always allow us sufficient time to determine whether your case has good prospects of success. After delivering the form we will continue our investigations which could take some time depending on how complicated your claim is. If we decide you do not have good prospects of success having carried out more detailed investigations we will be honest with you about this and there will be no charge for the work we have done on your behalf.

Six months after the form is lodged, we must participate in a conference with the other side to attempt to resolve your matter prior to going to court. If we cannot resolve your case at the conference, we will obtain your instructions to commence court proceedings. It can take between twelve (12) and eighteen (18) months to resolve your case once court proceedings are commenced, however sometimes delays within the court system can place the matter out of our control.

5. What do you need to do?

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 *Personal Injuries Proceedings 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, carry out any relevant 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 Claim** with the other side (within one month of our interview with you). We must then receive a response from the other side indicating whether or not they are satisfied with the contents of the Notice of Claim. It will be our aim to have compliance confirmed as soon as possible.

Within two months of compliance a **Part 2 Notice of Claim** needs to be lodged. This form provides further information such as financial and medical details.

While 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 other side. In some cases the other side 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, we have a six (6) month period to obtain the 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 defendant.

(b) Statement of Loss and Damage

After the defendant has been served, they will send the document to their insurance company who will appoint solicitors to defend the action. The defendant's solicitors will need 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 any 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 insurer 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 many public liability cases, it will be necessary for us to engage a safety expert to inspect the place where your accident happened. We must be able to prove legally that the risk of injury was foreseeable, and we often 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 court.

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 rest.