

## **Is compensation for injuries received in motor vehicle collisions the same for each State in Australia?**

Australia is a Commonwealth of six States and two Territories. Each State and Territory have differing compensation schemes. The procedure to claim compensation is different in each State and the entitlements which are available are different for each State and Territory.

The following information relates to motor vehicle accidents which occur in the State of New South Wales.

## **What compensation is available for people injured in motor vehicle accidents in New South Wales.?**

In New South Wales people who are injured in motor vehicle accidents can choose to access two types of benefits. The first is to access a benefit of up to \$5000 for medical treatment expenses and loss of income under no fault accident claim compensation. Even the driver who was responsible for the accident can access benefits under this scheme. To make a claim the claimant must complete an Accident Notification Form (ANF) and accompanying Medical Certificate and provide the Certificate to the Compulsory Third Party (CTP) insurer of the relevant vehicle. Details as to who are the relevant insurers can be obtained from the Motor Accidents Authority (MAA).

If a claimant is injured in an accident due to someone else's fault then the claimant can elect to make a claim on the CTP scheme by alleging fault. In such circumstances a claimant can recover compensation in excess of \$5000. To lodge a claim the accident must be reported to the Police within 28 days of the accident, if Police did not attend the accident scene and a Claim Form and accompanying Medical Certificate must be provided to the CTP insurer of the vehicle responsible for the accident within six months of the date of the accident. A claim can be lodged after an ANF has been lodged. If a Claim Form is not lodged by that time then the entitlements to compensation can be severely compromised. If a Claim Form is lodged late then a claimant must provide a full and satisfactory explanation for the delay in the lodgement of the claim. The explanation for the delay can include a delay in onset of symptoms.

### **What compensation is available under the at fault scheme?**

Compensation is available for pain and suffering, known as non-economic loss, if the claimant is left with impairment exceeding 10% assessed in accordance with Impairment Guidelines issued by the MAA. The assessment is undertaken by medical practitioners who have had training in assessing impairment in accordance with the Guidelines.

In addition compensation can be recovered for past and future loss of income, past and future medical treatment expenses, assistance which may have been provided by family members in the past and what is contemplated in the future and assistance that may be provided by commercial care providers.

### **Should I report my accident to the Police?**

If you are an overseas visitor then it is strongly recommended that the accident be reported immediately to the Police. This will ensure that details regarding the accident are correctly recorded.

NSW Police will only need to attend an accident if:-

- i) Someone is injured or trapped
- ii) Police need to direct traffic or deal with hazards
- iii) A vehicle needs to be towed from the accident scene
- iv) Anyone involved has failed to exchange details about their licence and identification.

It is recommended that if you are involved in an accident you notify the CTP insurer from the vehicle you were travelling in at the time of the accident about the accident.

### **Should I use a Lawyer to assist me in making a claim?**

Whilst the system in New South Wales is structured in a way that claimants do not necessarily need to use a Lawyer to assist in recovering compensation, it is generally accepted that a Lawyer is required for the purpose of advising in respect of entitlements to compensation and for dealing with the insurance company to ensure that they have sufficient information to properly consider the claim. Case law in New South Wales confirms that irrespective of where the claim for compensation entitlement might be determined the laws of New South Wales apply as to the extent of the entitlement to compensation including the threshold for compensation for non-economic loss.

**Is there a time limit for concluding the claim?**

There is a general three-year limitation period for the claim to be concluded. There are alternative dispute resolution processes which are contained within the Motor Accidents Compensation Act which set out a procedure to avoid the necessity of the matter being determined by a Court. The claimant must ordinarily go through a process of having the entitlements to compensation determined by the Claims Assessment and Resolution Service (CARS) before being entitled to commence Court proceedings. There are cost penalties which apply if a claimant does not recover compensation greater than that which can be recovered via the CARS process.

**Who pays my legal costs?**

A Lawyer will enter into a Costs Agreement which will set out how the Lawyer proposes to charge you for any work undertaken. The Lawyer must tell you in a notice separate to the Costs Agreement if the Lawyer proposes to charge you fees in excess of the amount of costs that can be received from a CTP insurer for an at fault claim. No fees can be recovered for no fault claims.

Fees are usually paid on completion of a claim.