

Motor vehicle accident guide

If you have been injured in a motor vehicle accident you may have a claim against the compulsory third party (CTP) Insurer of the person who caused the accident.

The Motor Accident Insurance Act 1994 applies to motor vehicle accident claims.

For the injured party it provides access to common law, that is, the injured person has a right to approach a law court to seek monetary compensation from the person/entity 'at fault' for the personal injury and other related losses.

As a fault based scheme it requires proof of liability, i.e. the injured party must be able to establish negligence against the person/entity they believe is at fault.

At McNamara Law we have a REAL approach to motor vehicle accident claims. As a firm that has been around more than 80 years we are:-

1. Reliable

As a local law firm with families and connections to the Ipswich region, we place a high value on offering high quality legal help to our clients, our reputation depends upon it!

2. Experienced

When it comes to effectively and efficiently resolving your legal problem, experience matters! With over 80 years of experience working with the people of the Ipswich and Lockyer Valley regions of Queensland, we get you!

3. Approachable

We've been around long enough to know that for many people legal problems are both difficult and stressful. What we bring to the table is not only experienced and dedicated legal help, but an approach that our clients often remark as "refreshing." In our firm, being "approachable" is a core value that we always aspire to live up to.

4. Local

We've been helping the people of Ipswich and Lockyer Valley regions for over 80 years. Today we are one of the largest law firms in the local area with a deep-seated commitment to giving back.

If an injury results in the loss of capacity, the injured person may have lost the ability to prepare a will or enduring power of attorney. Compensation payments may also effect the injured persons wishes in a will that had already been prepared.

We recommend that if you, or a family member have been involved in an accident, you should seek advice about how the accident might effect your estate from one of McNamara and Associates estate lawyers.

McNamara Law understand that the financial strains that result from personal injures can place pressure on relationships. If your relationship has deteriorated because of an injury, you should seek advice from one of McNamara Law family lawyers.

What injuries can you claim for

To be able to make a motor vehicle accident claim, you only need to answer yes to two questions:-

1. Was the accident someone else's fault?
2. Did you suffer any injury?

It does not matter what kind of motor vehicle accident happened. It could involve:-

- a. Cars;
- b. Trucks;
- c. Bicycles;
- d. Motorcycles; or
- e. Pedestrians.

You can claim if you were the driver or passenger. You may also claim if you witnessed the accident, or are dependent on the person injured in the motor vehicle accident.

What injuries can you claim for

The types of injuries that could be claimed from a motor vehicle accident are very broad Generally speaking, as long as the injury is connected to the motor vehicle accident, it can be claimed. These injuries could be physical or psychological.

These injuries could be new, or they could be aggravations of pre-existing injuries. Dependents can also claim for victims of fatal accidents.

Who pays for the treatment and rehabilitation costs

Rehabilitation in the form of physiotherapy, chiropractic treatment, counselling, surgery etc are all commonly required to assist with recovery in the immediate aftermath of an accident.

If your claim is accepted then generally the CTP Insurer pays for your rehabilitation costs.

Unfortunately, the Insurer is under no obligation to meet the cost of any rehabilitation expenses you might incur unless, and until, they admit liability for the circumstances of the motor vehicle accident.

The Insurer has six months to investigate the circumstances of the motor vehicle accident and to respond as to their position on liability. Until that time they are under no obligation to fund your medical/rehabilitative treatment.

How do you claim

The first step in bringing your claim is to issue the Notice of Accident Claim Form.

This form needs to be sent to the Insurer within 9 months of the motor vehicle accident, or within 1 month after instructing a solicitor to act for you. If this is not done, you will need to provide an explanation for the delay or you may lose your right to bring your claim.

It is very important that all injuries are listed in the Medical Certificate and subsequent documents in order for you to be fully compensated for your loss and damage. If your claim is concluded without the inclusion of all injuries you may not be able to obtain compensation in relation to that injury at any time in the future.

How you fill out the form can significantly affect both the amount of compensation you receive and the way the CTP Insurer treats you.

McNamara and Associates can assist you in completing the Notice of Claim Form.

What happens after you lodge a claim

Once you serve your Notice of Accident Claim Form, your claim will have formally begun.

The Insurer will then have fourteen days to respond to tell you whether:

- a. They accept that the information identified in the claim form complies with the provisions of the legislation; or
- b. There is further information they seek to be able to confirm compliance.

If you are a lifetime participant in the National Injury Insurance Scheme you need to deliver a preservation notice to the Insurer and the Agency within 14 days of receiving a compliance

What happens after you lodge a claim - (cont)

response from the Insurer or the date when you should have received a compliance response. If you are an interim participant in the NIIS, it is essential you tell the insurer immediately if your status changes and you either become a lifetime participant or cease to be a participant in NIIS as this will affect the damages you are entitled to be awarded.

Once you serve your Notice of Claim form the Respondent has the right to:

- a. Use the authority that you sign (as part of the Notice of Accident Claim Form) to obtain documents from your current and past doctors, the hospital that you attended for treatment, government agencies including the Police and Centrelink and your current and past employers. If you indicated in the Notice of Claim Form that you have had previous significant injuries, the insurer is also entitled to obtain documents relating to those injuries;
- b. Appoint investigators to investigate the factual basis of your claim. These investigators might take statements from witnesses or conduct video surveillance of you. Surveillance can extend to internet and social media checks. Please advise if you have been involved in any prior proceedings and also if you are active on any forms of social media like Facebook as surveillance inconsistent with your claim may affect claim outcome;
- c. Require you to provide information regarding the circumstances of the accident and anything to do with the quantum of your loss and damage. The insurer can require you to provide this information in a statutory declaration whereby you swear that the information contained in that declaration is correct;
- d. Require you to undergo independent medical examinations.

Not all of these things will apply to your claim. McNamara Law can provide you with advice and assistance in relation to any issues that do arise.

What compensation will you receive

If you settle your claim or a Court makes an award in your favour the money you receive is referred to as “damages”.

Damages are broken down into different categories:-

1. General Damages (pain and suffering)
2. Special Damages (expenses)
3. Past Economic Loss (lost wages)
4. Future Economic Loss (loss of future earning capacity)
5. Future Special Damages

McNamara and Associates can assist you calculating your claim for damages.

What compensation will you receive - (cont)

You should keep a record of all the expense you have incurred because of the injury; ie medication, Doctor bills, kilometers travelled to Doctor appointments, expenses of any modifications to the home and time off work are just some of the examples of the type of expense you should record.

You may receive your damages as a single payment (after deduction of the refunds outlined above and your legal fees and outlays). This is usually referred to as a lump sum settlement. It is by far the most common way to receive your damages.

Alternatively, you may choose to negotiate a structured settlement. A structured settlement occurs where there is an agreement providing for the payment of all or part of your damages in the form of periodic payments funded by an annuity or other agreed means. A structured settlement may be possible but you are strongly advised to obtain independent financial advice about the effect of a structured settlement as compared to the receipt of lump sum damages.

What happens if the Insurer denies fault

To succeed in a claim, you must show that the accident and the injuries you sustained were caused by another other persons negligence. That is, you suffered injury as a result of that person breaching their duty of care towards you.

This means collecting evidence. To start with photographs should be taken of the site where the injury occurred. Next, statements should be taken from anyone that witnessed the injury, including the injured person preparing a statement them self.

Some injury claims could take years to resolve, so a simultaneous record of what the injured person recalls of the accident is very important. These documents will be useful at some time down the track to prove the claim.

Sometimes this may not be enough to convince the Respondent that they are at fault. McNamara and Associates can investigate fault for you.

The information you obtain or fail to obtain about the circumstances of the accident can significantly affect the amount of compensation you receive and how the CTP Insurer treats you.

How long will the claim take

The following is a basic timeline of the likely progress of your claim. This is a guide only

STEP	TIME
Serve Notice of Accident Claim Form	1 month to 9 months from the accident date
The Insurer's response to Notice of Accident Claim Form and insurer's response regarding rehabilitation	14 days after serving the claim
The Insurer's liability response	6 months after serving the claim
Additional Information Request from insurer	6 - 9 months after serving the claim
Prepare Statement of Loss and Damage	12 months after serving the claim
Medical examinations	9 - 15 months after serving the claim
The Insurer's medical examinations	0 - 3 months later after your medical examinations
Compulsory conference	18 - 24 months after serving the claim
Begin court proceedings if necessary	24 months + after serving the claim

What are the time limits

A Notice of Accident Claim form must be given:

- a. if it is to be given to the Nominal Defendant because the motor vehicle at fault can not be identified - within three (3) months after the motor vehicle accident; or
- b. in any other case - given to the CTP insurer within the period ending on the earlier of the following dates:
 - i. nine (9) months after the motor vehicle accident or, if symptoms of the injury are not immediately apparent, the first appearance of symptoms of the injury;
 - ii. if you retain a solicitor/lawyer, then within one (1) month of the first consultation with the solicitor/lawyer.

Your claim could be rejected if you lodge outside the timeframes. Early lodgment of your claim will assist in early access to treatment and rehabilitation if required.

Regardless of what steps are taken in the meantime, it is essential that court proceedings are started within three years of your injury. In the event that you decide to engage McNamara and Associates or a different firm of solicitors to act for you, we strongly recommend that you urgently seek their advice on applicable limitation dates. Generally speaking after this date you will not be able to bring an action for damages in relation to this accident, however, you should take legal advice in this regard.

What else should I know

Employment - If your injuries have any impact on or are affected by your employment (such as bullying, demotion or dismissal), you may also wish to seek advice on whether these circumstances give rise to other rights.

Strict time limits may apply and you should therefore raise any concerns and seek advice as soon as possible.

Social Media - After you serve your claim the Respondent has the right to appoint investigators to investigate the factual basis of your claim. These investigators might take statements from witnesses or conduct video surveillance of you. Surveillance can extend to internet and social media checks. It has become common for Respondents to perform full reviews of a claimant's social media profile, whether it be Facebook, Twitter, Instagram, LinkedIn, Snapchat, YouTube or any other websites.

We strongly advise that you bear in mind that the Insurer to your claim may investigate your social media profiles before posting comments, pictures or videos.

Even if your profile is closed to the public, the Insurer may obtain an Order from the Court for you to disclose the entire content of your social media profile.

National Injury Insurance Scheme - The National Injury Insurance Scheme ("NIIS") is a scheme set up to ensure that people who suffer particular serious injuries as a result of a motor vehicle accident in Queensland receive necessary and reasonable treatment, care and support regardless of fault. These injuries are certain types of spinal cord injury, certain types of traumatic brain injury, certain amputations, certain burns, certain shoulder injuries and permanent blindness caused by trauma.

NIIS applies to persons injured after 1 July 2016 and may provide reasonable and necessary treatment, care and support for life or for a determined period depending upon need. It is administered by the National Injury Insurance Agency Queensland ("the Agency").

You may have been assessed as either an interim or lifetime participant of NIIS. If you receive a notice from the Agency that your assessment has changed from interim to lifetime or if you cease to be a participant in NIIS, it is important that you let us know as this may impact on your rights and obligations. If you are at all unsure, please contact us to discuss.

If you are not already a participant in NIIS, we can discuss with you if you are eligible to participate in the NIIS, and can assist you to make an application to the Agency. If you are eligible and the application is made within one year of the motor vehicle accident the Agency must accept your application. If the application is made after this time the Agency has a discretion whether or not to accept it.

What else should I know - (cont)

If you are a lifetime participant in the National Injury Insurance Scheme and you are awarded treatment, care and support damages as part of your settlement or Court award you must give notice to the Insurer and National Injury Insurance Agency ("Agency") within 14 days of the settlement or judgment as to whether or not you accept the awarded treatment, care and support damages. McNamara Law can provide you with advice and assistance with this decision.

If you are an interim participant in the NIIS, you are not entitled to be awarded damages for treatment, care and support until you cease to be a participant in NIIS or until you become a lifetime participant.

If you are a lifetime participant in NIIS and then accept an award for treatment, care and support under a final judgment or binding settlement (and the agency pays such award), then you stop being a participant in the scheme. Any later application to participate in the scheme again cannot be made for at least 5 years from when you stopped being a participant.

There is no guarantee you will be accepted back into the scheme. Criteria for reacceptance will apply. If this might be applicable to your circumstances, it will be your responsibility to record this date.

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Liability limited by a scheme approved under professional standards legislation. (personal injury work exempted)

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