



GC Law guide for people injured
in a motor vehicle accident

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Contact

P. 1300 302 318 | **E.** info@gclaw.com.au | **W.** www.gclaw.com.au

A. Suite 5010, Level 4 Arbour Lane Terraces, Robina Town Centre, Robina QLD 4230

GC Law guide for people injured in a motor vehicle accident

If you are in a motor vehicle accident in Queensland and you suffer an injury that is the fault of the driver, owner or another person with Compulsory Third Party (CTP) insurance, Queensland legislation allows you to claim compensation for damages.

If you were partially at fault, you are still entitled to make a claim, but the compensation you receive may be lower. Your claim must be made against the CTP insurer of the party that caused the accident.

If you were the at fault driver – or if it is found that nobody was at fault – and you are injured, you are not eligible to claim any compensation (some exceptional circumstances can apply in the occasion of a fatal or serious injury – we can examine your options and advise you of this possibility if appropriate).

What are my options if I cannot make a claim?

If you cannot claim compensation but require medical treatment and/or are unable to work, there are other options available to you, such as:

- sick leave
- Centrelink benefits
- Medicare
- public health system
- (if you have them) other insurance policies and/or private health cover (some people have insurance policies attached to their superannuation accounts).

Your insurer may offer some benefits if you were at fault. Contact your insurer to find out what you are covered for.

Fatal injuries

If you are the relative or dependent of someone who was fatally injured in an accident, and that accident was someone else's fault – wholly or in part – you can claim for loss or expenses.

What can I claim?

If you are in a motor vehicle accident in Queensland and you suffer an injury that is the fault of the driver, owner or another person with Compulsory Third Party (CTP) insurance, Queensland legislation allows you to claim compensation for damages.

Each claim is assessed individually, but your claim for compensation may include:

- pain and suffering and loss of amenities of life
- past economic loss (including loss of superannuation entitlements) from the date of your injuries to the date of settlement or trial
- future economic loss (including anticipated loss of superannuation entitlements) from the date of the settlement or trial to your anticipated retirement age
- paid or gratuitous care and assistance you may have received as a result of your injuries
- out-of-pocket expenses (or special damages) of medical and similar expenses, travel expenses, costs of special needs and an allowance for future costs of these items
- interest (on past expenses and economic loss)
- some legal costs.

It will be up to you to show that your claim is directly resulting from injuries sustained in your accident, but the insurer is legally obligated to pay for your reasonable rehabilitation. Your claim will be assessed individually on its merits, and entitlements can differ vastly. We can assist you with any questions you have about these items specific to your case.

CTP insurance covers personal injury only. You cannot claim damage to vehicle or property through CTP insurance.

Fatal injuries

In the case of fatal injuries, a relative or dependent may be able to claim reasonable funeral expenses and/or any financial loss that arises from the loss of an income provider. This can include claims from a spouse (including de facto spouse), dependent children, or any other dependent person.

We can assist you if you would like to make a claim on a fatal injury, or you can use the [Fatal Injury Claim form](#) on the Motor Accident Insurance Commission (MAIC) web site.

How do I make a claim?

You are legally required to report any motor vehicle accident to the police if a person has been injured. If you are making a CTP claim, you are also required to ensure the accident has been reported to the police before lodging the claim.

If you were the driver of a vehicle involved in an accident, it is best to attend a police station in person to report the accident if the police did not attend the scene of the accident.

If you were not a driver in the accident but you want to lodge a CTP claim, you can check with the closest police station to the site of the accident whether the accident has been reported. If they do not have a report on file, you will need to complete a Report of Traffic Incident to Police form and take it to the police station closest to the site of the accident.

How do I lodge my claim?

The CTP insurer of the driver of the at fault vehicle will handle the claim for compensation.

To lodge your claim, you must send the following to the CTP insurer of the at fault vehicle within the applicable time limit (see time limits, below):

- the registration number of the vehicle that was the cause of the accident
- the police accident report reference number
- a fully completed [Notice of Accident Claim Form](#) or a [Fatal Injury Claim Form](#) (a partially completed form may hold up your claim; if you are having trouble completing this form for any reason, we can help or advise you on your options)
- a medical certificate that covers all injuries you are claiming (this must be from a registered medical practitioner such as your GP, not an allied health provider such as a physiotherapist or chiropractor)
- copies of any relevant reports, documents, accounts and receipts you have. See MAIC's list of [Licensed Insurers](#) for the addresses of each CTP insurer in Queensland.

If you do not know which insurer to lodge with, contact the MAIC CTP Helpline on 1300 302 568. When calling the helpline, have ready the details of the accident, the registration of the at fault vehicle and the police accident report reference number.

If the vehicle that was at fault in the accident has not been identified, or is unregistered (and therefore uninsured), you should send the claim form to the **Nominal Defendant**. The Nominal Defendant will step in to handle the claim as if it were a CTP insurer.

If the vehicle that was at fault is registered in another state or territory, or the accident happened in another state or territory, but the accident happened in Queensland, we can help you to identify the CTP insurer of the interstate vehicle.

Of course, if you engage the services of a GC Law lawyer, we can assist you at every step of this process and ensure you have everything you need to lodge a claim and achieve the best possible compensation payout.

Time limits

Legislation requires you to lodge your claim within three months if the at fault vehicle could not be identified.

In any other case, you must lodge your claim:

- within nine months of the accident or at the first appearance of symptoms of any injuries (whichever is earlier), or
- if you have a lawyer managing your claim, within one month of the first meeting with your lawyer. We will ensure you adhere to this requirement.

If you lodge your claim after these times have elapsed, it may be rejected without being considered. The earlier your claim is lodged, the earlier you can have access to required treatment and rehabilitation if you require it.

The entire claim must be settled, or court proceedings started, within three years of the date of the accident. After this, you lose any right to compensation.

If you were under 18 years old at the time of the accident, you have until your 21st birthday to settle your claim or start court proceedings.

Forms

We can provide you with all of the paperwork you need, and assist you in filling out the forms. If you would like to do it yourself, you can use the following forms to lodge your claim:

- [Notice of Accident Claim Form](#)
- [Fatal Injury Claim Form](#)
- [Report of Traffic Incident to Police Form](#)

What happens after I lodge my claim?

What are the CTP insurer's obligations?

When they receive your completed [Notice of Accident Claim Form](#), the CTP insurer is legally required to:

- advise you if your form was completed and lodged correctly (within 14 days)
- advise you if they will pay for costs of rehabilitation expenses (within 14 days)
- advise you of their decision on liability (within 6 months of the claim form being lodged correctly)
- attempt to settle the claim as soon as is practicable.

How does the insurer decide on liability?

The insurer will have a claims manager assess all the information provided and decide whether the vehicle that is insured by them was at fault in your accident. If this is the case, your claim will be accepted and the insurer will admit liability. To come to this decision, the insurer may investigate the accident themselves – including video surveillance, a thorough study of your records, and review of your activities on social media – and/or require you to be examined by their medical experts. They may also talk to your doctor and employer to ascertain the extent of your injuries and the impact they will have on your ability to perform your usual work.

Other parties involved in the case may provide a different account of events from the details you have provided, so an investigation may be necessary to discover the truth about the cause and effects of the accident. It can be difficult to be the subject of an investigation, but try not to take it personally.

It is important for you to keep all records relating to the accident and injuries. This includes information such as when and where you had medical examinations and appointments, as well as recording the pain you experience, loss of sleep, what symptoms you suffer and when, medication you are taking, impact on

your family life, and any work restrictions you have or will have in the future. Of course, you should also keep all invoices and receipts relating to your treatment, including required travel.

If the insurer informs you they are not liable, and you wish to take the matter further, you can:

1. attempt to resolve the matter informally with the insurer and, if this attempt is unsuccessful and you wish to pursue the matter formally,
2. take the matter to court for resolution (either yourself, or through your lawyer).

Another possibility is the insurer may find that you contributed to the accident and/or your injuries. This is called contributory negligence. If the insurer finds you were contributorily negligent, they may reduce your damages by the percentage they deem you contributed to the accident/injuries. For example, if they decide you were 50 per cent responsible for the accident, you will receive half the damages you would otherwise have received if you had not contributed.

When the insurer accepts liability – either the full amount or a percentage thereof – they are legally required to:

- take steps to ensure you are provided with reasonable and appropriate rehabilitation services
- meet any reasonable medical, hospital and medication expenses
- as stated above, the insurer may declare they are only partially liable for these costs if they deem you contributorily negligent.

We can provide more information about what qualifies as reasonable and appropriate rehabilitation, or you can refer to the [MAIC rehabilitation and treatment](#) page.

What are my obligations?

You are legally required to provide assistance to the insurer if they request it. This assistance may include:

- providing further information, photographs, documents or records, if you have them
- agreeing to have a (further) medical assessment or examination
- completing an [Additional Information Form](#).

You must also inform the insurer if there is any significant change in the circumstances of your medical condition or your work situation. You are also obligated to do all you can to recover from your injuries. This includes agreeing to the appropriate medical treatment, participating in recommended rehabilitation or treatment, and returning to work – or taking steps to find work – as soon as you are able.

Rehabilitation and treatment

If you require rehabilitation treatment, this should be begun as soon as possible after your injury to maximise the outcome. Many people recover from their injuries without needing any rehabilitation, but some may require further assistance such as physiotherapy. Your doctor can tell you whether your injuries require rehabilitation.

The rehabilitation provided under the CTP scheme is intended to return you to your physical condition before the accident. If the injuries sustained make this impossible, the rehabilitation treatment will focus on helping you learn new skills to assist the way you live in the future.

What does the CTP insurer fund?

If the insurer informs you that they accept liability, or if they agree to pay for your rehabilitation without admitting liability, this means they will pay for all expenses that are reasonable and appropriate, that relate to injuries from the accident, and are validated; that is, you have provided receipts for the treatment to the insurer or have a referral for the treatment from your GP.

If the insurer has accepted liability for your claim or agreed to fund rehabilitation without admitting liability, the insurer will pay rehabilitation expenses provided they:

- are reasonable and appropriate
- relate to the injuries from the accident, and
- are validated; for example, by providing receipts to the insurer or GP referral.

How do I organise my rehabilitation or other treatment?

There are two possible ways to organise your rehabilitation:

1. the insurer receives your medical certificate, which states you require rehabilitation services, and contacts you to organise the commencement of services
2. you and/or your doctor decide you require rehabilitation services. In this instance you can contact the insurer and request they fund the rehabilitation services (your lawyer can do this on your behalf if you prefer), or you can ask your rehabilitation treatment provider to contact the insurer on your behalf. The request must be in writing, which can be a letter from your doctor, or a copy of your treatment plan.

Who pays for rehabilitation expenses?

If you obtain pre-approval from the insurer to pay the expenses prior to receiving your treatment, the rehabilitation provider will send the invoice straight to the insurer. You will not have any out-of-pocket expenses.

To arrange pre-approval:

1. you must get a referral for your treatment or other consultations and tests from your doctor and send a copy to the CTP insurer.
2. The CTP insurer will give pre-approval and notify you and your doctor of the outcome.

If you receive treatment prior to gaining approval from the insurer to pay the expenses, you may be reimbursed by the insurer after approval has been provided. You will need to provide a valid receipt, and the insurer will then decide whether the treatment was reasonable and appropriate.

It is important you understand what services are covered, and for how long, how many visits, or for what time period. If a particular service is approved once, this does not automatically mean it will be approved on an ongoing basis.

Who pays for treatment in a public hospital or by emergency services?

You will not be billed for any treatment in a public hospital or by emergency services. All public hospital and emergency treatment in Queensland is covered by the Hospital and Emergency Services levy which is included in your CTP insurance premium.

What happens if the insurer rejects my claim?

If the insurer denies liability, you will be responsible for meeting all of your medical expenses. If you appeal this decision and the insurer is later found to be liable, you may be reimbursed, so it is important to still keep all of your receipts. Otherwise, you may be able to claim some of your expenses through Medicare or through your own private health insurance. Speak to your providers about what expenses they cover.

If the insurer has denied liability and you do not agree with this decision, you can request that the insurer refers your case to their internal dispute resolution service. If you are not satisfied with the outcome of this action you can contact MAIC, which will appoint a mediator to your case. Participation in mediation is voluntary for all parties, and there may be a cost involved.

If you are not satisfied with the outcome of mediation, you (or the insurer) can take the matter to court for a final decision.

Having legal representation and advice will be particularly useful for you if the result is not what you anticipated. We can explain why the insurer has reached this decision, and the process and prospects of taking the matter further. Of course, we can also answer any other questions you have about your case.

Further reading

- [Road to recovery – rehabilitation following a motor vehicle accident](#)
- [Whiplash injury recovery – a self help guide](#)
- [The University of Queensland whiplash web site](#)
- [National Health and Medical Research Council information sheets](#)

How to settle your claim

A claim can be considered settled when the insurer has made a decision on liability, your injury is stable, and the full impact of your injury is known. Most claims are settled through negotiation and do not make it to court. If you have engaged a lawyer, they will handle your negotiations with the insurer for you, and when you accept a settlement offer from the insurer, your claim is finalised and you can make no further claims. This can happen at any stage of the claim process.

If any government agencies – such as Centrelink, Medicare or WorkCover – have made any payments to you prior to your case for compensation being settled, the insurer may direct some of your compensation payment back to those agencies.

In addition to any settlements reached, you may also be entitled to a lump sum payout or income protection payments as covered by your superannuation. If you are unsure of what you are covered for with your super fund, we can help you find out.

Any money you are awarded as compensation is free of tax, but be aware that if you decide to invest the funds, you may be required to pay tax. Your accountant or financial adviser will be able to provide specific information for your situation.

What are the legal steps of the claims process?

1. The Motor Accident Insurance Act 1994 (Qld) states that you must serve a Notice of Accident Claim form on the CTP insurance company before any court proceedings can commence.
2. We will negotiate on your behalf with the insurer and try to settle your claim as quickly as possible once your injuries have stabilised (for this purpose, this means when your injuries have reached their maximum medical improvement), and your doctors have assessed any permanent damage you may have. This is most often done in an informal settlement conference between us and the insurer.
3. If informal settlement is unsuccessful, legislation requires all parties to attend a compulsory settlement conference. Cases that make it this far are usually settled here.
4. If your case remains unsettled, court proceedings will be scheduled to commence soon after. It is still possible to negotiate a settlement before or during the court proceedings. We find it is rare for cases to actually make it to trial.

Legal advice

Legal representation is not required to make a CTP claim but having a lawyer on your side will give you the best chance of achieving the maximum compensation payout you are entitled to. MAIC recommends you always consult with a lawyer. This is because the process can be highly complex and difficult to navigate, and our expert lawyers are best positioned to act on your behalf. Even if you have begun the process yourself and have found you require assistance, you can engage us at any time during your claim.

What legal fees will I have to pay?

GC Law operates on a no win–no fee basis. Before we act for you, we will take you through any legal fees that may apply to your case. You should be aware that even if you win your case, you may still be responsible for the payment of part of your legal fees. This is determined by a number of factors at play in your case. We will explain how this works with you before we start work on your case so you fully understand all possible outcomes of your case.

You can read about applicable thresholds and legal costs in Part 4, Section 55F of the [Motor Accident Insurance Act 1994](#) and Part 6, Section 27A of the [Motor Accident Insurance Regulation 2004](#).

How do we get started?

The best way to start your claim is to use [GC Law's Free Case Review process](#). This allows us to assess your case and respond to you accordingly. We can then advise on all matters that may affect your claim and commence the process of claiming compensation on your behalf for any injury sustained in the case of your employment.

Before engaging a lawyer you should discuss legal fees and how much you may be charged. For further information on legal advice contact the [Queensland Law Society](#).

How long will it take for my claim to settle?

It is important to understand that you only have one shot at making a claim. When we finalise your claim, your case is closed permanently. It is virtually impossible for GC Law – or any other legal representative – to re-open a completed claim for compensation. This is the case even if the injury you sustained has worsened or has not recovered the way your doctors thought it would.

When trying to accurately assess a claim, we prefer your treatment to be concluded. The financial cost of treatment is high and there is always some guesswork in anticipating the cost of your future medical treatment after the accident. We also need to understand whether you have recovered from the effects of the injuries, or whether you will be left with a permanent residual disability.

We will work to find a balance between not dragging out your claim any longer than is necessary, and putting ourselves in a position where we can accurately assess your full compensation entitlements.

This is why the Free Case Review is an important first step. This allows us to assess all the facts surrounding your accident.

Contact GC Law as soon as possible after your accident. This will allow us to assist you in preparing your claim to achieve the best outcome. Simply visit our [Free Claim Review](#) page or call us today on [1300 302 318](tel:1300302318). We'll be happy to talk to you about your individual circumstances.