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solicitors & barristers

YOUR GUIDE TO MAXIMUM COMPENSATION AND JUSTICE

CONTENTS

“Maximising justice requires that you:

- Be aware of all the facts and information you need to supply to an insurance company and the court to maximise your damages claim;
- Knowing how to choose the “correct personal injury lawyer” to handle your case;
- Being aware of how to minimise the costs and complications that could occur with your lawyer during your legal proceedings.”

FOREWORD FROM GERARD MALOUF

Our guide will assist you by providing information regarding your compensation case and also inform you of the problems that you may encounter, while offering solutions and support for the totality of your legal journey. This guide is not meant to be an all inclusive failsafe document, however it will highlight some of the more important issues that will assist you choosing a lawyer and ensure you receive maximum justice and compensation.

The law is very complex and most people would find it highly confusing and difficult to achieve any form of adequate justice without engaging an appropriately qualified expert and compassionate lawyer. Often people think they can handle matters themselves but this would open individuals up to far greater legal and financial risks. For instance there are numerous heads of damages (financial payments), that the average person would not be aware are claimable.

The critical reason you should engage an expert lawyer to handle your case is to avoid being greatly disadvantaged when dealing with highly expert aggressive insurance lawyers whose aim it is to reduce payouts in order to increase returns to shareholders.

The problem of course is how to choose the “correct” lawyer to represent you. Most people are concerned about whether or not their lawyer is going to consume the financial benefits they ultimately receive from their compensation verdict or settlement. This guide will help you feel more certain about how to choose the right lawyer and the steps to obtain a fair and just outcome and maximum financial result.

THERE ARE CRITICAL REASONS WHY YOU SHOULD ENGAGE THE CORRECT LAWYER TO HANDLE YOUR CASE...

1 HOW DO I CHOOSE THE RIGHT LEGAL FIRM AND LAWYER?

- PICK AN ACCREDITED SPECIALIST IN PERSONAL INJURY LAW

Personal injury law is a complex and legalistic area that requires an expert lawyer. How do you choose such an expert?
The Law Society of each state provides a list of Accredited personal injury specialists, this is a good starting point to make sure you choose an experienced lawyer. The lawyers listed have gone through rigorous examinations to be appointed as experts, and should be an invaluable source of information and guidance. This expertise does come at an additional cost, generally experts charge between $500.00 - $800.00 per hour, however their input and guidance is well worth the additional money spent.

- TRACK RECORD OF LAW FIRM AND REPUTATION

The track record of the law firm and its lawyers is also an important aspect to consider. Have they been in business for many years and have they maintained the same corporate ownership? What is their general position in the ever-expanding and competitive world of personal injury lawyers? What is their reputation and brand name like? **You can research many of these points using social media or Google Reviews.**

- INSIST YOU RECEIVE EXPERT LEGAL COUNSEL

Do not be misled by choosing what you consider to be a “great law firm”, then later find out you have been allocated to a lawyer that is junior and not an expert in the area you require. Often as a new client you are initially seen by a senior lawyer however after the introductions you may be placed with a junior inexperienced lawyer. **You should insist utilising the lawyer that you initially saw or someone with significant experience rather than be allocated to an inexperienced junior lawyer.** Many law firms provide a wonderful initial experience for potential clients but ultimately regard the client as just another number and don’t give the personalised expert attention initially promised or suggested. Insist you receive expert legal counsel and that this is clearly set out in the Cost Agreement.

- CLIENT CARE SERVICE

Does the law firm have a dedicated “client care” officer who is available for you to contact at any time via email or telephone if you have difficulty contacting your lawyer or his secretary? A problem clients have time and time again is a failure to be able to contact and communicate with their lawyers when the client requires attention. **Don’t forget it is your case, your money and your time and that you are giving that lawyer and law firm a wonderful opportunity by allowing them to handle your claim.** Ask your prospective law firm specifically about their policy regarding issues contacting a member of the legal team and whether they have alternative staff to handle matters.

- FIRM SIZE AND LEGAL SPECIALISATION

Often a firm that is too small may not necessarily be a wise choice and you should look for a firm that has the financial and professional resources to give you the support you may require. Often very large law practices are composed of numerous departments with various expert areas and whilst they may offer very good legal services perhaps you will not receive personalised service at reasonable professional fee rates. It may be wise to choose a medium-sized law practice that solely specialises in personal injury, a firm that has the ability to give you the extra care required so that you are not a forgotten client.

Seek out a law firm that solely specialises in personal injury, that has undertaken thousands of successful cases previously against insurance companies and is willing and able to financially support a claim that you are litigating. An appropriate law firm would cover all upfront expenses such as medical reports, barristers fees, Court filing fees and should be willing, in the unlikely event that your case is unsuccessful, to lodge an appeal where there is merit and fund the appeal if necessary.

Be aware that some law firms act for both insurance companies and injured clients. It is important when you are deciding to engage a law firm to ask whether the firm has previously acted for the insurance company you may be suing and whether the firm has any conflict of interest.

GMP law will be able to provide you with :

- Accredited specialists lawyers
- An exceptional track record and reputation winning over $4 billion dollars in total for our clients.
- Experienced legal counsel
- Client care services
- All upfront expenses are covered
- We will go the extra mile to fight for your case.
- Simple transparent fee agreement with a 90 day risk free guarantee
- We will reduce fees in the event of genuine
- No win no fee

TRUST IS CRITICAL TO ENGENDERING CONFIDENCE WHEN DEALING WITH LAWYERS.

THE TRACK RECORD OF THE LAW FIRM AND ITS LAWYERS IS ALSO AN IMPORTANT ASPECT TO CONSIDER.

SEEK OUT A LAW FIRM THAT SOLELY SPECIALISES IN PERSONAL INJURY

2 CAN I TRUST MY LAWYER TO REDUCE MY ANXIETY AND UNCERTAINTY?

- AN EXPERT LAWYER WILL SUPPORT YOU BY BUILDING YOUR CASE

A great lawyer will provide you with the expertise, care and experience required to obtain maximum compensation and justice for your case.

Your lawyer will establish liability (that the other party is at fault) by investigating the key facts of your case. It is critical to undertake investigation with urgency, this process should only take a few months. Your lawyer should utilise investigators to interview friends, staff, colleagues or independent witnesses to compile the critical facts that are necessary to establish liability.

Once all the key facts are established **experts in the field of engineering, medicine, work related injuries or accounting will often need to be briefed to provide an independent overview for the court** to establish on the balance of probability (>50%) the merit of your case.

- AN EXPERT LAWYER WILL ABIDE BY STRICT LEGAL TIME LIMITS

In all cases strict time limits apply to make your claim, the average person would not be aware of the complex range of time limits applicable for varying injuries. The time limits vary from state to state and even in relation to the type of injury and disabilities sustained. There are always exemptions to these time limits but negotiating extra time frames are extremely difficult.

Experienced guidance from an expert lawyer is critical when navigating the time limits of your compensation matter, it is recommended that you seek advice as soon as possible to abide by the time limits of your claim. Do not rely on an insurance company representative or their investigator to assist you as they have no obligation to do so.

Please refer to Chapter 6 “Time limits for claims - schedule of limitation periods” for further information.

- AN EXPERT LAWYER WILL DETERMINE IF YOU HAVE A SUCCESSFUL ACTION

Generally cases that involve personal injury including public liability, motor vehicle accidents, medical negligence and work related accidents, require that you only initiate an action when you have a claim that has a chance of success on the balance of probabilities. This means that **your lawyer needs to establish your action has greater than a 50% chance of success. An additional requirement is it must be proven that the amount of injury and damage suffered is sufficient to justify bringing a case, this threshold differs from state to state.**

The definitions and thresholds for injuries change depending on the type of injury sustained and the state where the accident occurred, there is no uniform legislation throughout Australia. Having an expert lawyer to support you through these complex standards is certainly worthwhile. You should ask your chosen lawyer to carefully explain the thresholds to you and your probability of being successful, along with any anticipated lump sum damages estimate that could be payable if you were successful.

Please refer to Chapter 7 “Outline of the law related to your claim” for further information.

3 WILL I BE FINANCIALLY EXPOSED- AND WAYS TO MAXIMISE MY FINANCIAL RESULT

Headings:

- What is a "no win no fee" arrangement? Will I be financially exposed?
- Things you should know before signing a Cost Agreement.
- How to get the best financials result when settling your matter?
- Contesting a Cost Agreements – If you are unhappy about costs at the conclusion of your claim
- Invalid Cost Agreements

WHAT IS A NO WIN NO FEE COST AGREEMENT? WILL I BE FINANCIALLY EXPOSED?

A "no-win/no-fee" financial arrangement usually dictates that if the client does not win their case they do not bare the legal costs incurred by the lawyer they engage, this is subject to the definition of "no win/ no fee" in the Cost Agreement signed before engaging the firm. Be aware not all "no win/ no fee" arrangements are the same.

It should be noted that "no win/ no fee" does not cover all costs of running the case. Be sure that you fully understand the firm's definition of "no-win/no-fee", if there is no detailed definition of "no-win/no-fee" provided by the firm do not sign the Cost Agreement.

Most importantly **"no win/no fee" is not applicable to any costs that the other side (also known as the defendant) wins against you assuming they are successful in defending the action.** For instance, if you lose your claim, costs are generally awarded against you personally and these could amount to many tens of thousands of dollars. Be aware that well before a case is lost lawyers have an exceptionally high responsibility to fully inform and advise their client that the merits of their case have changed and that the client is becoming more exposed to risk of a loss.

An insurance company's lawyer may sometimes allow a Plaintiff to discontinue a claim before it is concluded so that each party can withdraw and bear their own costs. This option should be explored if you feel your case has become exceptionally weak. However you must insist that your lawyer continuously updates you on your cases merit so that you are fully informed. **The lawyer has a professional responsibility to keep you fully informed but unfortunately in practice this doesn't always occur.**

Remember litigation is a dynamic and changing formula and the risks can vary during the course of a claim subject to new evidence.

THINGS YOU SHOULD KNOW BEFORE SIGNING A COST AGREEMENT

It is a requirement under the Legal Practitioner Act that Cost Agreements are:

- **Signed by all parties,**
- **Clear and transparent, and**
- **Properly explained by the lawyer to the client so that the client is fully aware of the Cost Agreement's contents.**

Cost agreements are very technical documents and lawyers are often in breach of the compliance required to make the cost agreement valid. Are you aware that if a cost agreement is deemed invalid due to the above issues it is likely the lawyer can't charge the client fees!

The single greatest problem raised by unhappy clients relates to the amount of costs being charged at the conclusion of a personal injury compensation matter.

- THINGS YOU SHOULD KNOW BEFORE SIGNING A COST AGREEMENT (CONTINUED)

The following are important points to understand and consider before signing any Cost Agreement:

- **Make sure "no win/no fee" applies to the professional fees** of the solicitor and also the barrister and any witness engaged on your behalf of your lawyer including doctors, accountants, engineers.
- **You should insist that the "no win/no fee" also applies to all expenses incurred by the lawyer** such as barristers fees, medical reports, accounting fees, Court filing fees, expert's reports. You must request a comprehensive definition set out in the cost agreement. Many firms offer "no win/no fee" for their professional fees but not for the expenses incurred which can add up to tens of thousands of dollars, if you are unsuccessful.
- **Be very wary of law firms that offer you a source of financial funding from a third-party to cover fees** such as medical reports, court filing fees, accounting fees etc. Often the fees plus interest are exorbitant and the firm may make you personally responsible to pay if you win or lose.
- It is important that you **receive in writing** from the lawyer you engage, fair and adequate informed **warnings about the risks of pursuing litigation.**
- **Hourly charge rate specifying an amount** to cover the senior lawyer, junior lawyers and other secretarial staff at varied rates.

- HOW TO GET THE BEST FINANCIAL RESULT WHEN SETTLING YOUR MATTER

Costs and compensation can become complex when a case is settled for an inclusive sum of money and a judgement has not occurred. In this circumstance relationships between client and lawyer may become strained. To avoid this from happening **you should ask your lawyer, BEFORE a settlement occurs (noting that over 95% of matters settle), what amount is to be allocated in the settlement towards legal costs.**
A professional lawyer will be able to give you an approximate indication of the legal costs included in the offer. It is important to note that signing an "authority to settle" will not stop you from being able to question your lawyer's fees in due course. Insist upon a detailed breakdown of costs before you settle and an accurate estimate of the net amount to be paid to you.

Before settling your claim avoid miscommunication with a lawyer by **requesting a signed document outlining the exact net amount you will receive after all expenses are paid and details of all deductions for expenses and any pay back to workers compensation**. DSS or other insurers. Often lawyers can be vague and put in catch all causes to cover any situation where they may have forgotten deduction.

- HOW TO GET THE BEST FINANCIAL RESULT WHEN SETTLING YOUR MATTER (CONTINUED)

Some of the most important deductions that should be included in the “written authority to settle” must cover the following, if applicable:

- Worker’s compensation payments that have been received;
- Medical treatment expenses paid by the insurance company or any accounts outstanding;
- Any payments required to be made to the Department of Social Security (Centrelink) covering unemployment, family benefit, and home care payments, not only for the injured but perhaps for a carer who has helped the injured person;
- Any other benefits that the injured person may have received such as private insurance for disability, superannuation payments for total and permanent disablement etc;
- A detailed breakdown of all disbursements; medical report fees, engineering report fees, internet, phone calls, photocopies, Court fees accounting feesetc;
- Your lawyer’s fees, including the barrister if applicable.

Do not sign anything unless you are certain about the minimum net amount you will receive and retain a copy of this document. It is important to note that settlement occurs in 95% of matters.

If you receive a judgement in your favour you will generally obtain a cost order against the losing party. The costs awarded are known as "party party" costs, but they do not include all of the true costs associated with your action. Approximately 60 to 70% of your lawyers costs will be paid with the balance coming out of your verdict. This is a complex negotiation and subject to the terms of your individual cost agreement.

Your lawyer has an obligation in the cost agreement to provide an estimate of the total costs of the matter, this should not be exceeded. If your lawyer suggests that they did "lots of extra work" and are therefore charging you more, this is not a satisfactory reason. **Your lawyer must update the costs estimate during the course of the litigation so that you’re aware of additional costs.**

GMP will be able to provide you with :

- A high quality 'No Win No Fee' financial arrangement- as outlined in this guide.
- Up to date information concerning the prospects of success and risks of your case.
- A high quality Cost Agreement that is clear and transparent.
- No third-party financial funding.

- CONTESTING A COST AGREEMENTS – IF YOU ARE UNHAPPY ABOUT COSTS AT THE CONCLUSION OF YOUR CLAIM

Be aware that any signed Cost Agreement can be contested in a number of ways.
At the conclusion of your matter you are entitled to a detailed itemised breakdown of costs at no expense to yourself. Your lawyer has an obligation to set out in great detail all work performed, justifying the amount of time spent and why the work was necessary.
Be aware that often the expert lawyer doesn't perform all the work themselves and a more junior member of staff may undertake certain work, the charge rate for items completed this way should be less. It is unlikely many lawyers will be able to justify 100% of their fees at the successful conclusion of a matter.
Any arrangement regarding capped or fixed fees via some form of percentage or specified amount must be relevant to the reasonable time that it is undertaken based upon hourly rates that are agreed. For instance, say you've agreed on 20% being the fixed rate, it has to be referenced by the amount of time spent undertaking the work and if the lawyer can't justify the number of hours, then they are not entitled to charge this percentage. **Lawyers are not legally allowed to charge a percentage of your verdict, if they do the agreement is invalid.**

- INVALID COST AGREEMENTS

In the event that a lawyers' Cost Agreement is found to be invalid in an important and critical way, the whole agreement will then become invalid and a supreme court cost assessor, that you can appoint for little cost, will investigate the matter at the conclusion of the claim. The cost assessor will significantly reduce the professional costs of the lawyer based upon what was reasonable.
In the event that the Cost Agreement is held totally invalid, the lawyer is only entitled to charge the statutory legal rates which are far less (often 50% less) than the rates the lawyer may have intended to charge.
We do not suggest you always **challenge your lawyers fee at the end of the matter, only where you are genuinely dissatisfied and have good cause to doubt the true costs and time involved by your lawyer. Most** lawyers are highly professional and reputable.
Be aware that any oral or written inducements offered by the lawyer not contained in the signed Cost Agreement can be taken into account and held against the lawyer to support the view that the Cost Agreement was invalid or not fair.

DO NOT ASSUME BECAUSE THE LAWYER IS UNDERTAKING THE CASE THERE MUST BE GREAT MERIT. INSIST ON WRITTEN ADVICE.

INSIST THAT YOUR LAWYER CONTINUOUSLY UPDATES YOU ON YOUR CASES MERIT AND ANY INCREASE IN COST ESTIMATE

MAKE SURE YOUR LAWYER DOESN'T CHARGE AN UNREASONABLE AMOUNT OF INTEREST ON EXPENSES THEY INCUR.

GMP WILL PROVIDE YOU WITH AN EXCELLENT AND FAIR "NO WIN NO FEE" ARRANGEMENT AND KEEP YOU FULLY INFORMED REGARDING THE MERITS OF YOUR CASE.

ALWAYS ASK YOUR LAWYER ABOUT THE LIKELY NET AMOUNT TO BE AWARDED IF YOUR CLAIM IS SUCCESSFUL AND BEFORE ANY SETTLEMENT.

REQUEST THAT YOUR LAWYER PROVIDE YOU WITH A DOCUMENT THAT YOU SIGN BEFORE YOU SETTLE A CLAIM.

4 WHO IS AT FAULT FOR THE ACCIDENT- LIABILITY ISSUES?

- LIABILITY DISPUTES; WHAT YOU NEED TO KNOW TO OBTAIN MAXIMUM JUSTICE

Be aware that **insurance companies often contest liability, they do not simply accept that your accident happened in a particular way and will often allege "contributory negligence".**
Liability can be disputed where there are multiple defendants, each one can contest liability or cross claim against the other defendants.
In cases where the facts are difficult to determine **it is especially important for an expert lawyer to:**

- **Obtain very detailed statement of facts from yourself and all witnesses** or people who knew about the particular circumstances that led to the accident. You can ask your expert lawyer to make investigations and forward you copies of signed statements from these witnesses.
- Once the details of the fcats are established use this information to **obtain an opinion from an expert to support a finding of negligence**, for example an accident reconstruction specialist engineer for work injury, motor vehicle accident or public liability cases. The experts background gives their opinion weight, a Judge relies upon expert reports to help determine who is responsible for the accident.

The cost of expert reports can be very expensive up to a few thousand dollars each, but the reports are essential if liability is being disputed by the insurance company. Make sure you ask your lawyer whether or not you will require such reports and what they intend sending to a specialist to assist them in compiling the report.

Your lawyer should send a specialist any resource material to support your case including;

- Statements,
- Photographs,
- Diagrams and
- Medical reports.

The more accurate the information that is sent, the more credible the report will be. Often it's best to insist that the expert view the site of the accident or incident with you, as this will reduce any chance of the expert misinterpreting the facts of the case and give you the best chance of success in a contested action, this is known as a "view".

In medical negligence cases a suitable expert medical specialist needs to be briefed with all the information. **A medical expert must have the necessary expertise to comment on the facts- not all doctors are equal** and Judges often strike out expert reports from doctors who do not practice in the area of medicine upon which they have been asked to comment.
It is very important that any reports served by the insurance company on "Liability" or "medical damages" be resent back to your expert specialist to comment upon before the hearing, so as to clarify and support your claim.
For every report that your expert lawyer commissions, it is highly likely that the insurance lawyers will use their resources to find other experts to contradict this evidence.

5 STRATEGIES TO MAXIMISE YOUR FINANCIAL/COMPENSATION RESULTS

Headings

- How to maximise your financial result
- Areas that may be claimed for your financial result
  - Pain and suffering
  - Past and future income loss
  - Home care assistance
  - Past and future medical expenses
  - Loss of superannuation
  - Claims involving psychiatric illness
- You can maximise your just our com by:
  - Keeping diary notes
  - Attending treating doctors
  - Medical records and your credibility
  - Social media
  - Wage loss records
  - Self-employed
  - Attending doctor's appointments
  - Truthfulness

HAVING AN EXPERT LAWYER TO GUIDE YOU THROUGH THIS MAZE IS CERTAINLY WORTHWHILE. GMP LAW WILL PROVIDE YOU WITH THE BEST LEGAL SUPPORT.

- HOW TO MAXIMISE YOUR FINANCIAL RESULT

It is common knowledge that **if you deal directly with an insurer and do not use an expert lawyer, your claim will settle for a relatively small amount**. An insurance company's does not have to advise you of your legal rights and they have no obligation to assist you.
An expert lawyer who understands the complexities of the law, can achieve a greater financial result for you. An expert lawyer is aware of the large range of damages (money) available to be claimed.

- AREAS THAT MAY BE CLAIMED FOR YOUR FINANCIAL RESULT:

  - PAIN AND SUFFERING

This is an **amount payable where a person suffers a serious ongoing impact on their lifestyle involving personal care, work activities, social activities and home life.** An award can be for both the past and the future. It is not inconceivable in serious cases for many hundred thousands of dollars to be awarded for this area of damage. The current maximum amount in NSW is close to $600,000.00, this can vary according to applicable state law.
It can also cover psychiatric illnesses, significant anxiety, and inconvenience to your lifestyle and is unrelated to an award for wage loss.
It is not enough to state that your life has changed, your lawyer should obtain independent supporting evidence from credible witnesses including family, friends and work colleagues. Your lawyer should also obtain expert medical specialists reports supporting the claims of your witnesses.

  - PAST AND FUTURE INCOME LOSS

Under this head of damages **you can claim a lump sum of money if you are seriously injured and may sustain an income loss, including any partial loss. This income loss can be projected into the future** until an anticipated retirement age of 65 to 70 years, perhaps even later subject to individual circumstances.
The amount awarded by the Court is net after-tax but discounted for early payment as it is received now rather than waiting into the future. Actuarial tables are used to discount early payment calculated using a 5% table of multipliers. Average life expectancy is also taken into account and vicissitudes of life (potential future health problems).

An expert lawyer should obtain all of your tax returns, looking at your past earnings and examining in detail what potential extra earnings you might obtain in the future, making reasonable assumptions regarding promotion to a higher positions with greater pay and other opportunities that may provide additional income.
Your lawyer should engage a Forensic Accountant, where necessary, to prepare a detailed report for court proceedings working out not only past and future wage loss but also loss of Superannuation and potential additional income.

- ## HOME CARE ASSISTANCE

Home care **covers the cost of services that assist you in the home due to an accident**, these can include; cooking, cleaning, washing, gardening, dressing and personal care and if necessary home building modifications.
Most state law requires a person to exhibit the need for assistance for more than six hours per week before the threshold is met to claim home care. Your expert lawyer should commission a specialist home care expert to produce a report that estimates the amount of assistance you require weekly. Currently the rate claimable is approximately $38.00 - $45.00 per hour. In many serious cases the award under this head of damages is much more than the wage loss and can run into millions of dollars for seriously injured people who require full-time care.

A home care assistance claim must be supported by expert witnesses who produce home-care reports. Judges do not always accept reports from home-care specialists, general physiotherapists, social workers and nurses, unless the report has been supported by a person's medical specialist. The court will usually require a combination of a suitably qualified home care nurse, rehabilitation assistant and a specialist medical practitioner such as a neurologist etc. Having your General Practitioner support the home-care report is usually insufficient for a Judge or the insurer to be persuaded.

- ## PAST AND FUTURE MEDICAL EXPENSES

Under this heading you are able to make **a claim for any past or future medication and treatment including hospital admissions that you are likely to require or have required in the past**. Your expert lawyer should investigate these matters with all your medical providers regarding your previous, ongoing and future medical expense and requirements. This is not a simple matter and requires a great deal of investigation and exploration regarding future expenses.
Under this head of damage you might be entitled to a further $50,000.00 - $300,000.00 depending on your age, the younger you are the greater the potential claim. Any claim made under this head of damage needs to be supported by independent medical specialists and pharmacologists. Your expert lawyer should write to your specialist requesting detailed reports supporting your claim.

- ## LOSS OF SUPERANNUATION

A forensic accountant who specialises in litigation is able to accurately project superannuation loss, future wage, salary or contractor fee loss accurately. Many lawyers do not accurately calculate loss of superannuation, particularly for younger people and as a consequence injured clients miss out on hundreds of thousands of dollars.
The **forensic accountant report needs to be supported by medical specialist reports** outlining that a person's working abilities have been impaired by a percentage due to their injuries. If the expert lawyer utilises the assumptions of the medical reports and the expert Forensic Accountant, the Judge and the insurer will more likely accept the findings.

- CLAIMS INVOLVING PSYCHIATRIC ILLNESS

If a person is making a claim involving an injury that causes a serious psychiatric illness the expert **lawyer needs to support this claim with independent evidence including; statements from family and work associates, along with reports from specialist psychiatrist and psychologist**. Witnesses may need to attend the psychiatrist or psychologist appointment with the injured person so that an independent credible perspective can be provided to the doctors.
Often psychiatric illness arises when people are subject to nervous shock, **if these cases are handled correctly they receive extraordinarily high awards for damages** due to the ongoing need for home-care, supervision, wage loss and medical treatment expenses. Doctors that are able to comment on this area of damage are Psychiatrists and Forensic Psychologists, not GPs or other specialists.

- YOU CAN MAXIMISE YOUR JUST OUTCOME BY:

GMP HAS THE EXPERTS AND KNOWLEDGE TO CLAIM 100% OF YOUR LOSSES.

- KEEPING DIARY NOTES

It is important to keep a diary of all your health problems, financial losses and medical expenses plus a record of all the Medical Practitioners seen and investigations undertaken. **Be careful what you write as this document may be subpoenaed by the insurance company.**

- ATTENDING TREATING DOCTORS

It is very important that you **continue to visit your doctors regularly as they keep a record of your treatment and this is often subpoenaed to Court for examination** by insurance companies. Make sure you follow your doctor's directions for further investigations such as x-rays, CT scans, ultrasounds and referrals to other medical specialists. If your doctor is not taking your injuries and your claim seriously, you are not obliged to stay with this doctor. You have the right to change doctors if you are unhappy.

- MEDICAL RECORDS AND YOUR CREDIBILITY

It is very important that you are completely honest about prior accidents and compensation claims with your lawyer and any doctors you visit. The opposing insurance company will likely subpoena all your prior medical records from doctors or hospitals you have attended, this is easily accessed through your Medicare records.
It is usually easy to solve any potential problem with past accidents and compensation claims if you explain your previous medical issue and whether or not the problems from this health issue subsided before the more recent injury/disability. If you don't do this, your credibility will be severely damaged and Judges and insurance companies may take a very dim view of your claim.

- SOCIAL MEDIA

It is critical you be aware that the **insurance company lawyer will likely subpoena social media information. They are able to investigate the actions you take in your personal life** that may conflict with the allegations you made in your claim for damages. Accordingly, do not post anything on Facebook, Twitter or other social media platforms that are in conflict with your claim.

- WAGE LOSS RECORDS

If you are suffering a total or partial wage loss either as a self-employed person or employee, **it is imperative that this is reflected in the records of your employer** from whom you undertake the work. There is no benefit and, in fact it goes against your claim, if your employer generously continues to pay you a full wage and you claim a wage loss, that is, unless this is documented as advance pay to be repaid in due course.

- SELF EMPLOYED

If you are self-employed it is critical to **seek advice from your accountant so that the drawings that you may continue to make are not incorrectly reflective of earning income** but rather paid through a loan account. In particular, do not lodge tax returns after your injury until you seek advice from your expert lawyer and accountant so that any losses are accurately reflected in tax returns following the accident.

- ATTENDING DOCTOR'S APPOINTMENTS

You should be very careful to **only take with you reports and medical investigations that have previously been agreed with your lawyer as being relevant and helpful**. If you have any x-rays and/or CT scans that show a dysfunction they should be taken to your doctor's appointments. Do not take all medical reports sent to you by your own lawyer unless he has requested you do so.

- TRUTHFULNESS

You should always be 100% truthful when answering questions and it is highly likely that you will be asked whether you can perform various bodily movements or are able to do certain work or home activities.
It is critical that you do not embellish the truth and if you perform physical activities you should state that you do so. You should also confirm that when you perform physical activities you feel pain if that is the case. When you are being asked specific questions by the insurer's doctor, it is likely that they have seen film of you, so be careful.
Making an admission that you can do certain physical activities for example, bending in and out of a car with a child is not fatal to your case, as long as you are truthful and state that you've done this activity with pain if this is indeed the case. Honesty adds to your credibility.

IT IS ALWAYS CRITICAL TO SUPPORT ANY ASSUMPTIONS WITH CONCRETE MEDICAL EVIDENCE AND FACTUAL STATEMENTS.

INSURANCE COMPANIES ARE YOUR LEGAL ENEMY. IT IS NOT ONLY A MATTER OF YOU STATING THAT YOUR LIFE HAS CHANGED, YOU NEED INDEPENDENT SUBSTANTIATED PROOF.

LOOK AT NOT ONLY YOUR PAST EARNINGS BUT EXAMINE IN DETAIL WHAT POTENTIAL EXTRA EARNINGS YOU MIGHT OBTAIN IN THE FUTURE.

6 MEDICAL TESTS AND INVESTIGATIONS TO HELP YOU MAXIMISE DAMAGES.

- WHAT IS THE APPROACH

In order to obtain the best outcome for your case your lawyer must investigate and obtain adequate medical evidence to support your injuries for your claim. The medical treatment evidence should cover all of the body parts related, caused or aggravated by your injury that is being argued. The legal system uses medical evidence to argue your case leading to a fair and reasonable outcome for clients.

It is your lawyer's role to ensure that **the full extent of your injuries, continuing disabilities and symptoms are fully examined thorugh the medical treatment evidence so as to strengthen your claim**. **See the table attached below which provides a guide for symptoms and investigations you should insist your treating doctor refer you for investigation. This is critical for the success of your claim.**

- MEDICAL CAUSATION

The issue of medical causation requires your lawyer establish that your medical condition, injuries and continuing disabilities were either caused, accelerated or aggravated by the accident in question. The only way to establish this is to obtain medical treatment evidence from your treating doctors and specialists which addresses all of your injuries across all of the relevant body parts that have been affected by the injury. Medical treatment evidence should be sought out before your medico-legal assessments is completed, this will assist the medico-legal assessment evidence by clearly outlining the full extent of your injuries.

- MEDICAL TREATMENT EVIDENCE

After an initial accident many people's conditions become progressively worse over time therefore the full extent of a persons injuries, disabilities and complaints should be investigated as they progress. **It is important that you explain to your doctor and lawyer how your injuries affect the various aspects of your daily life, in order to fully establish the quantum of your case**.

Generally your medical treatment evidence should be able to establish that you have suffered either an inability or reduce capacity to participate in normal social, domestic, recreational, sporting and/or employment activities.

Your lawyer should firstly collate a checklist of your injuries, continuing disabilities and symptoms across your whole body that are directly related to your accident. You should then see your family GP to coordinate your medical treatment in respect to each of the body parts that have been affected. This **sooner that this is done after the accident the easier it is to establish a casual connection between your injury and your continuing disabilities since the accident.**

It is your lawyer's obligation to ensure that the full extent of your injuries and disabilities are explored for your personal injury claim. The best way to achieve this is to have a medical treatment regime which is coordinated with your family GP so they can undertake and refer all the appropriate medical treatments, radiological imaging and specialist medical evidence that will be brought together with the medico-legal specialist assessment to strengthen your claim.

THIS TABLE IS KEY TO MAXIMISING THE RESULTS OF YOUR CLAIM

PRIMARY INJURIES	POSSIBLE SYMPTOMS	TREATMENT INVESTIGATION

Brain Injury	• Unconsciousness
	• Oxygen/Glaucoma score is less than 15
	• Blurred vision
	• Memory loss
	• Headache
	• Tinnitus
	• Slurred speech
	• Loss of balance
	• Behavioural changes
		• CT/ MRI of Brain
		• You Should Consult:
		  ◦ Neurosurgeon
		  ◦ Neurologist
		  ◦ Neuro psychologist
		  ◦ Psychiatrist

Neck	• Neck Pain
	• Head Ache
	• Loss/restriction of movement
		• CT/ MRI of neck
		• Disc pathology
		• Nerve conduction studies
		• You Should Consult:
		  ◦ Neurosurgeon
		  ◦ Orthopaedic/ Spinal surgeon

Shoulders	• Referred pain from neck • Loss of range of movement • Generalised pain	• CT/ MRI/ Ultrasound of shoulders • You Should Consult: ◦ Orthopaedic surgeon
Upper Extremities	• Pins and needles in hands/fingers • Restricted range of movement/pain	• You Should Consult: ◦ Neurologist • Referred for Nerve Conduction Studies

Thoracic Spine	• Pain between shoulders and mid back
	• Referred pain up or down the spine
		• You Should Consult:
		  ◦ Neurologist
		  ◦ Orthopaedic surgeon
		• CT/ MRI/ Ultrasound of Thoracic Spine

PRIMARY INJURIES	POSSIBLE SYMPTOMS	TREATMENT INVESTIGATION

Lumbar Spine	• Generalised pain
	• Loss of range of movement
		• CT/ MRI/ Ultrasound of lumbar spine
		• You Should Consult:
		  ◦ Orthopaedic surgeon
		  ◦ Spine surgeon
		  ◦ Neurosurgeon

Hips	• Referred pain from lower back • Direct pain	• CT/ MRI/ Ultrasound of Hip/s • You Should Consult: ◦ Orthopaedic surgeon
Lower Extremity	• Pain in leg/knee • Restricted range of movement	• CT/ MRI/ Ultrasound of hips or legs • You Should Consult: ◦ Orthopaedic surgeon

Psychiatric	• Poor self-care and personal hygiene
	• Minimal social and recreational activities
	• Unable to travel
	• Poor social functioning (relationships)
	• Poor concentration
	• Inability to adapt to life changes
		• You Should Consult:
		  ◦ Psychologist
		  ◦ Psychiatrist
		  ◦ Mental health hospital
		• Obtain Mental Healthcare Plan from GP

SECONDARY INJURIES	POSSIBLE SYMPTOMS	TREATMENT INVESTIGATION
Sleep disorder	• Disturbed sleep	• Sleep study
Gastrointestinal	• Stomach discomfort • Ulcers • Bowel functioning • Reflux	• Colonoscopy • Endoscopy • You Should Consult: ◦ Gastrointestinal Specialist
Sexual Dysfunction	• Neurological Dysfunction	• Neurological test • Sexual Health
Neurological	• Referred Pain • Pins and needles • Sciatica	• Nerve conduction studies • Lyrica
Chronic pain	• Pins and needles • Referred Pain • Shooting pain in various parts of the body • Chronic regional pain syndrome	• Pain management treatment • Nerve blocks

USE THIS GUIDE TO DETERMINE YOUR SYMPTOMS AND THE INVESTIGATIONS THAT ARE NEEDED TO BE COMPLETED BY YOUR TREATING DOCTOR.

CONNECTING YOUR INJURIES TO YOUR SYMPTOMS AND INVESTIGATING THESE FURTHER IS KEY TO THE SUCCESS OF YOUR CASE.

7 TIME LIMITS FOR CLAIMS - SCHEDULE OF LIMITATION PERIODS

TIME LIMITS

In all cases strict time limits apply to make your claim. They vary from state to state and even in relation to the type of injury and disabilities sustained.

We refer you to the following websites to ascertain the limitation period applicable to your claim in your State:-

NEW SOUTH WALES

- https://www.lawcover.com.au/schedule-of-limitation-periods/
- https://legislation.nsw.gov.au/view/html/inforce/current/act-1969-031

QUEENSLAND

- http://www.qls.com.au/files/c25856d3-40bd-4904-946f-a37e01114734/Guidance_for_Members_-_Limitation_of_Liability_Scheme.pdf
- https://www.legislation.qld.gov.au/view/html/inforce/current/act-1974-075

VICTORIA

- https://www.legislation.vic.gov.au/in-force/acts/limitation-actions-act-1958/107
- https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/1999-02/child_migrat/report/e06

AUSTRALIAN CAPITAL TERRITORY

- https://www.legislation.act.gov.au/View/a/1985-66/current/PDF/1985-66.PDF
- https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/1999-02/child_migrat/report/e06

NORTHERN TERRITORY

- https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/1999-02/child_migrat/report/e06
- https://legislation.nt.gov.au/en/Legislation/LIMITATION-ACT-1981

SOUTH AUSTRALIA

- https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/1999-02/child_migrat/report/e06

- https://www.legislation.sa.gov.au/LZ/C/A/LIMITATION%20OF%20ACTIONS%20ACT%201936.aspx

TASMANIA

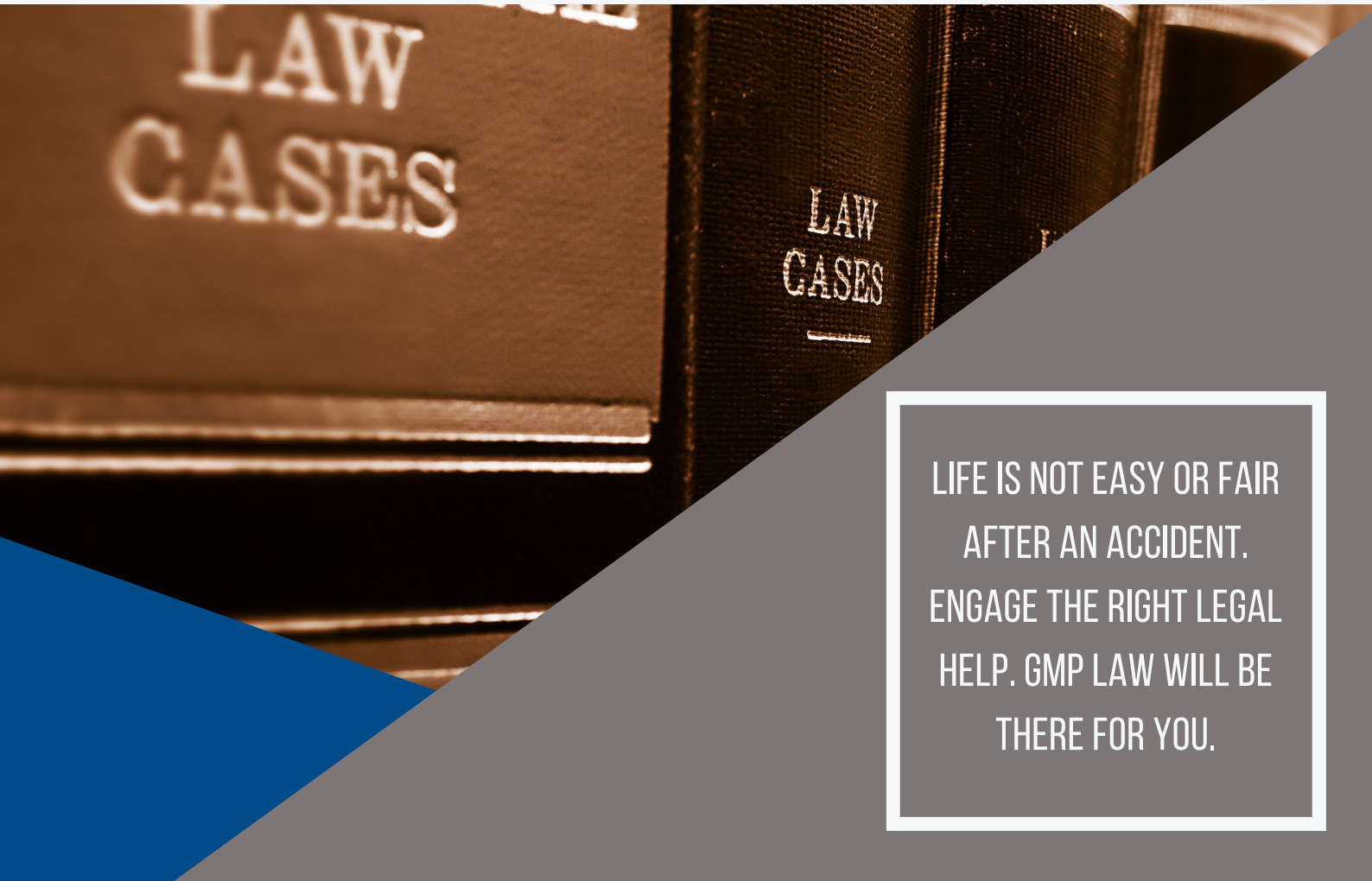
- https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/1999-02/child_migrat/report/e06

- https://www.legislation.tas.gov.au/view/html/inforce/current/act-1974-098

WESTERN AUSTRALIA

- https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/1999-02/child_migrat/report/e06

- https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_8263_homepage.html



LIFE IS NOT EASY OR FAIR AFTER AN ACCIDENT. ENGAGE THE RIGHT LEGAL HELP. GMP LAW WILL BE THERE FOR YOU.

8 WHY CHOOSE GERARD MALOUF AND PARTNERS FOR YOUR LEGAL REPRESENTATION

- CAN YOUR LAWYER STATE THE FOLLOWING?

Gerard Malouf and Partners will provide you with the highest quality legal service as covered by this guide:

- Accredited specialist in personal Injury.
- Excellent track record and reputation.
- Senior lawyers with experience will take on your case.
- GMP is a specialised personal injury firm with **38 years of experience** winning cases.
- GMP is not a giant publicly listed law company but **one of the largest private highly specialised and focused law firms** in the area of personal injury and will disputes Australia wide.
- GMP is **small enough to care intimately** for their clients **large enough to have the financial medical and expert resources** clients need to receive maximum compensation.
- GMP **have won close to $4 billion in compensation for our successful clients**. There would be less then a few law firms in Australia with this enviable record and **as a direct consequence insurance companies take our demands most seriously**.
- GMP has a dedicated **client care service team** to ensure that you are kept up-to-date at all stages and you receive the triple "C" compassion, commitment and competence from all our staff.
- GMP is unique in offering a **totally transparent simple and fair cost agreement** with the **written undertaking to reduce fees** where you are genuinely dissatisfied subject to terms and conditions.
- **Offering a 90 day free trial period** allowing you to withdraw without any costs upon giving five days written notice if you are dissatisfied.
- A culture that is unique where "simply winning" is not enough but achieving "maximum justice in the minimum time using any resources available notwithstanding the efforts involved" is the requirement for any staff employed.
- At GMP we help people achieve the **maximum result in the minimum time**. We will provide you with timely expert legal advice and support.

GMP lawyers have won over 35,000 insurance and negligence compensation claims and close to 4 billion dollars for our clients over the past +38 years, all while under the same management. We have a 98% success rate for our cases that have gone to court.

At GMP we are trained to think outside the square, to be innovative with our approach to legal issues. We are regarded by the legal community as one of the toughest litigation **experts willing to take on difficult cases that other law firms won't litigate.**

Our highly trained staff undergo continuous rigorous in-house training to ensure that they are at the cutting edge of litigation. Each member of staff is hand picked and can only remain at GMP if they satisfy the three criteria of **compassion, commitment and competence towards their clients**. **This is our mantra and culture!**

GMP expert lawyers will fight aggressively for your rights and do the upmost to obtain a great result for your case. **We are so confident in the quality of our work that we're prepared to reduce our lawyers fees if you are genuinely dissatisfied for good reason.**

IS THERE ANY OTHER CHOICE?
CHOOSE GERARD MALOUF AND PARTNERS
WHEN LOSING IS NOT AN OPTION.

9 OUTLINE OF THE LAW RELATED TO YOUR CLAIM:

- MOTOR VEHICLE ACCIDENTS
  - NSW
  - QLD
  - VICTORIA
- MEDICAL NEGLIGENCE
  - WHAT SHOULD I DO IF I HAVE SUFFERED AN INJURY
  - CAN I CLAIM ON BEHALF OF A DECEASED FAMILY MEMBER
  - THE PROCESS OF MAKING A CLAIM
- PUBLIC LIABILITY (INJURY BY ACCIDENT OUTSIDE WORK)
  - NSW
  - QLD
  - ACT
  - VICTORIA
  - DAMAGES AND VALUE OF A PUBLIC LIABILITY CLAIM
  - IMPORTANT ELEMENTS TO CONSIDER FOR YOUR PUBLIC LIABILITY CLAIM
- SUPERANNUATION AND TOTAL PERSONAL DISABILITY (TPD) CLAIMS
  - TOTAL PERMANENT DISABLEMENT CHECKLIST
- DUST DISEASE, MESOTHELIOMA AND ASBESTOS CLAIMS
- PRODUCT LIABILITY COMPENSATION
- CONTESTING A WILL- INHERITANCE DISPUTE
  - AM I ELIGIBLE TO MAKE A CLAIM?
  - TIME LIMITS IN MAKING A CLAIM
  - PROCESS OF MAKING A CLAIM
- SEXUAL ASSAULT INCLUDING CHILD ABUSE COMPENSATION
  - IMPORTANT LEGAL ELEMENTS CONCERNING SEXUAL ASSAULT

OUTLINE OF THE LAW FOR MOTOR ACCIDENT INJURY CLAIMS IN NSW

The current scheme of compensation in NSW is governed by the Motor Accidents Injuries Act 2017 which applies to all accidents occurring after 1 December 2017. There are two stages for such claims:

- FIRST STAGE

It is important for everyone to note that there are strict time limitations that apply and anyone who's been involved in a motor vehicle accident regardless of fault has an entitlement for benefits for the first six-month period.

To be eligible for such benefits you need to complete the statutory benefits claim form and have your treating doctor complete a certificate of fitness.

This then gets forwarded to your CTP insurer and they are obliged under the law to attend to payment of your medical and treatment expenses, your loss of weekly wages and any other treatment and care expenses you may require.

As is always the case if you have sustained an injury you should ensure that its reported to the police within 28 days and obtain details of the other driver and how the accident occurred.

If, however you were wholly at fault for the accident you will only receive benefits for the six-month period

Injuries that are more than a soft tissue injury or what is known as a minor injury will be eligible for ongoing benefits past that six-month stage and can continue depending on the nature of the injury for a continuing basis up to 5 years if the treatment is considered to improve your recovery.

It is important to ensure that you lodge your claim within the first three months of the accident.

- SECOND STAGE

Once the insurer has determined that you have not sustained a minor injury and that you are not mostly or wholly at fault then your benefits will continue. These benefits will include your weekly wage which after the first 13-week period will reduce to 80 or 85% of your pre-accident weekly earnings.

Having the benefit of a team of Accredited Specialist Solicitors at Gerard Malouf and Partners you will also be advised and guided with regards to lodging a claim for common law damages. Our team will work with you to prepare the claim to ensure maximum benefit.

Such claims incorporate the following two heads of damages:-

- Your pain and suffering (referred to as noneconomic loss) subject to your injury being classified as a non-minor injury and the injury exceeding 10% whole person impairment threshold, this is determined by independent medical assessment and will very much depend on your injuries.

- Past and future economic loss is a claim for your full wage loss including loss of any overtime or bonus benefits from the date of the accident on a continuing basis. These claims for past and future economic loss including loss of Superannuation Benefits are extremely valuable especially if someone has an injury which will impact on the future capacity to work and future employability

GERARD MALOUF AND PARTNERS WILL:

- Advise you as to the importance of ensuring that these claims are lodged within the relevant time period and focus on maximising your claim for these benefits.

- Will work with you in collating all the relevant information and guiding you through the process so as to ensure we maximise your claim.

- Advise you generally with regards to the nature of your injuries and provide you with the relevant information so as to ensure that both you and your doctors are fully investigating your injuries and providing you with the optimum treatment.

- Provide you with a brochure as to the nature of injuries and most likely what treatment is required, what investigations need to be undertaken and what specialists you will need to see. The purpose of this is to ensure we legitimately maximise your claim.

- Take a common sense approach to all claims and provide you realistic advice as to the value of your claim.

- MOTOR VEHICHLE ACCIDENT CHECKLIST FOR NSW

1 CIRCUMSTANCES OF THE ACCIDENT

Who is at fault?

- If you are completely at fault: There is no legal claim however there is a claim for statutory benefits covering wages and medical up to 6 months.
- If you are not at fault: Proceed with next section 2. Please note If single vehicle accident: then we cannot assist - no damages claim available. May be able to get statutory benefits paid for up to 2 years if blame can be placed on another person eg motorbike slipping on oil spilled on road.

2 MINOR INJURIES

An injury to muscles, tendons, ligaments, menisci, cartilage, fascia, fibrous tissues, fat, blood vessels and synovial membranes – but no rupture to same Eg.s: soft tissue, whiplash, bulging discs, stress, spinal nerve, root injury– without radiculopathy (eg bulging disc pressing on nerve), adjustment disorder, acute distress disorder.

For a minor injury no damages claim is available and benefits will cease after 6 months. You are still able to request treatment from the insurer after this date if your treatment is deemed to be required to improve your recovery

It is advised that you:

- Obtain an MRI scan to check for tears or radiculopathy.
- Obtain a nerve conduction study if you have numbness/tingling see a neurologist.
- Obtain a sleep study for disrupted sleep.
- See a psychologist to get any psychological injuries diagnosed.

3 NON MINOR INJURIES

These include:

- breaks or fractures
- tears in discs/Disc prolapse
- brain injury
- radiculopathy: eg numbness and tingling you need 2 or more of the following:
  - loss of symmetry or reflex
  - sciatic nerve root
  - muscle atrophy
  - muscle weakness
  - sensory loss
- nerve damage
- rupture to ligaments/cartilage/tendons
- scarring
- vision/hearing loss
- internal organ damage
- depression or PTSD - diagnosed.

4 OBTAIN IMAGING AND SCANS

It is advised that you obtain MRI or nerve conduction studies for Radiculopathy. If not you have not obtained imaging you must get referrals to get scans completed.

5 ARE YOU A JOBHOLDER?

If you are at least 15 years old and:

- were employed or self-employed (whether or not full-time):
  - at any time during the 8 weeks before the motor vehichle accident (MVA);
  - during a period or periods equal to at least 13 weeks during the year before the MVA, or
  - during a period or periods equal to at least 26 weeks during the 2 years before the MVA, AND, had not retired permanently from all employment.

OR

- before the MVA had entered into a contract for employment with employer or to commence self employed business.

OR

- was, immediately before MVA, receiving weekly wage payments under MVA Act or the *Workers Compensation Act* 1987.

<u>If you can confirm :yes" to any of the above options then you are able to claim damages.</u>

Are you off work for an injury/illness, even if it is not related to the subject accident? It might be worth talking with Total Permanent Disability legal specialists within the firm.

6 ARE YOU UNEMPLOYED?

Are your injuries significant enough that they may get over 10% Whole Person Impairment?- If not then no damages can be claimed.

What is your future income circumstances?- If you would have been earning an income “but for the accident” then you may have a damages claim available.

OUTLINE OF THE LAW FOR MOTOR ACCIDENT INJURY CLAIMS IN QLD

If you have been injured in a motor vehicle accident in QLD which you were not wholly at fault for, and wish to make a claim, you will need to do the following:

- Report the accident to the police;
- Lodge a Notice of Accident Claim Form with the CTP insurer of the vehicle you believe is at fault for the accident;
- Attend upon medical practitioners and ensure you continue to undergo the required treatment to aid in your recovery; and
- Be sure to inform the insurer of any significant changes in your medication condition immediately.

- ## WHAT TO INCLUDE IN A NOTICE OF ACCIDENT CLAIM FORM
  - A certified ID;
  - Medical Certificate completed by a medical practitioner;
  - If you have a legal representative, the supervising principal must complete the law practice certificate which is attached to the claim form. This must be verified by a statutory declaration;
  - Complete the 'Payment to you/offer of settlement section' by writing the monetary amount you would be willing to accept to finalise your claim. In order to substantiate your offer, you should attach all relevant evidence including the following:
    - Medical treatment receipts;
    - Medical reports;
    - Photographs;
    - Statements;
    - Tax returns;
    - Payslips; and
    - Other proof of economic loss.

- ## TIMEFRAMES TO LODGE NOTICE OF ACCIDENT CLAIM FORM

For Nominal Defendant claims (where the vehicle that caused the accident is unidentified or uninsured:

- Notice must be lodged within 3 months. If the claim is lodged outside of the 3 months, the claimant must provide a statutory declaration outlining the reason for the delay.

For all other claims (whichever comes first):

- Within 9 months after the MVA or
- If symptoms of the injury are not immediately apparent, the first appearance of symptoms of the injury or
- If the claimant has a solicitor managing the claim, within 1 month of the first consultation with the solicitor.

If liability is accepted, the insurer will be liable to make payments to or for your reasonable and appropriate medication and treatment expenses.

- COMMON LAW DAMAGES (LUMP SUM COMPENSATION CLAIM)
  - Once the insurer has accepted liability, the insurer will either accept the offer proposed in the claim form or make a counteroffer.
  - The Heads of Damages that can be claimed are:
    - Future medical treatment and rehabilitation expenses;
    - Out of pocket expenses such as medical, travel and pharmaceutical expenses;
    - Past and future wage loss;
    - Past and future superannuation loss;
    - Past and future gratuitous care; and
    - General damages (pain and suffering).
  - The entitlement to general damages is subject to the claimant's injury being assessed using the Injury Scale Value System (ISV).

Table 11—For an injury arising on or after 1 July 2020

Item	Injury scale value	Base amount	Variable amount
1	5 or less	—	Injury scale value x $1,620
2	10 or less but more than 5	$8,100	(Injury scale value - 5) x $1,890
3	15 or less but more than 10	$17,550	(Injury scale value - 10) x $2,230
4	20 or less but more than 15	$28,700	(Injury scale value - 15) x $2,550
5	25 or less but more than 20	$41,450	(Injury scale value - 20) x $2,850
6	30 or less but more than 25	$55,700	(Injury scale value - 25) x $3,190
7	35 or less but more than 30	$71,650	(Injury scale value - 30) x $3,520
8	40 or less but more than 35	$89,250	(Injury scale value - 35) x $3,830
9	50 or less but more than 40	$108,400	(Injury scale value - 40) x $4,120
10	60 or less but more than 50	$149,600	(Injury scale value - 50) x $4,400
11	70 or less but more than 60	$193,600	(Injury scale value - 60) x $4,670
12	80 or less but more than 70	$240,300	(Injury scale value - 70) x $4,990
13	90 or less but more than 80	$290,200	(Injury scale value - 80) x $5,280
14	100 or less but more than 90	$343,000	(Injury scale value - 90) x $5,570

OUTLINE OF THE LAW FOR MOTOR ACCIDENT INJURY CLAIMS IN VICTORIA

The law is governed by the *Transport Accident Act* 1986. A "Transport Accident" is defined in S.3(1) of the Act as follows:

- An incident directly caused by the driving of a motor car or motor vehicle, a railway train or a tram.

s3(1A) extends to include incidents:

(a) involving a motor vehicle, a railway train or a tram which is out of control;
(b) involving a collision between a pedal cycle and an open or opening door of a motor vehicle;
(c) involving a collision between a pedal cycle and a motor vehicle while the cyclist is travelling to or from his or her place of employment; or
(d) involving the opening or closing of a door of a bus, tram or railway train.

Victorian legislation has both Statutory benefits and common law claims.The Transport Accident Commission (TAC) deals with the claims for compensation under this legislation.

- ## TIME LIMITS & LODGING A CLAIM
  - Section 64 – if a driver in an accident receives a notice from TAC regarding the accident, the driver must make a report within 28 days of receipt of that notice.
  - Section 68 - a person who is injured in a transport accident has 12 months from the date of accident or from when the injury manifested itself, in which to make a claim for compensation.
  - Section 69:
    - a claim for deprivation or impairment of earning capacity (made under s149) can be made within 6 years after the date of the accident.
    - Claims for costs or expenses (made under s 145) for a person that has died from an motor vehichle accident, can be made within 6 years after the death of the deceased person.
    - Claims for out of pocket expenses of a parent or guardian of an injured child (s145(3), can be made within 6 months of incurring the expense.

- ## EXCLUSIONS TO STATUTORY BENEFITS

There is no claim for statutory benefits if:

- A Claimant was injured in a transport accident in the course of employment and thereby has workers compensation entitlements.
- A Claimant was injured in a transport accident on private land when driving an unregistered motor vehicle.
- A Claimant who commences a common law claim for damages in another state will cease to be entitled to statutory benefits.

- STATUTORY BENEFITS INCLUDE:
  - Lifetime medical expenses, vehicle and home modifications.
  - Loss of earnings (LOE) for the first 18 months post accident if the claimant is an "earner" - s6.
  - Loss of earning capacity benefits (LOEC) for the second 18 months post accident if the claimant is or is not an earner.
  - Lump sum impairment benefit (based on the AMA 4th Edition Guides for the Evaluation of Permanent Impairment for physical injuries and Guide to the Evaluation of Psychiatric Impairment for Clinicians GEPIC for psychiatric injuries).
  - LOEC benefits continued after the second 18 months if impairment is 50%.

- DISPUTE RESOLUTION PROCESS
  - A claimant has 12-months from the date they are notified of a decision, to lodge an Application for Review to the Victorian Civil and Administrative Appeals Tribunal (VCAT).
  - A claimant can elect for an internal review- but this does not extend the 12-month period within which to lodge the review in the Tribunal.
  - A claimant can elect to lodge a Dispute Resolution Application under the No Fault Dispute Resolution Protocols:
    - A claimant has 3 months after a decision to lodge an application for review at VCAT if the 12-month period has expired.
    - TAC pays a fixed fee for the claimant's legal costs if resolved at protocol stage.

- COMMON LAW PROCESS

A Clamant must have a serious injury to bring a claim for common law damages. A 30% impairment automatically is deemed a serious injury.

Regulation 5 of the Transport Accident Regulation 2017 states a serious injury includes;

- an injury that results in permanent blindness;
- burns to not more than 50% of the body that cause severe disfigurement and comprise of full-thickness burns—
  (i) to the head, neck, arms or lower legs; or
  (ii) that result in severe difficulties in performing mobility, communication and self-care tasks.
- a brachial plexus injury that results in the loss of the use of a limb.

Reg 5 (2) "permanent blindness" means—

- a field of vision that is constricted to 10 degrees or less of arc from central fixation in the better eye, irrespective of corrected visual acuity; or
- a corrected visual acuity of less than 6/60 of the Snellen Scale in both eyes; or
- a combination of visual defects resulting in the same degree of visual loss as referred to in paragraph (a) or (b).

If the impairment is less than 30%, a serious injury is only satisfied if the TAC grants a Serious Injury Certificate or a Court gives leave to bring a common law claim for damages based on the 'narrative test' set out in Section 93(17). A claimant can elect to lodge a Serious Injury Application under the Common Law Protocols to obtain a Serious Injury Certificate.

- **SECTION 93(17)- NARRATIVE TEST COMMON LAW**

(17) In this section— serious injury means:

(a) serious long-term impairment or loss of a body function; or

(b) permanent serious disfigurement; or

(c) severe long-term mental or severe long-term behavioural disturbance or disorder; or

(d) loss of a foetus.

- **SERIOUS INJURY MEANINGS**
  - Serious has been held to mean "more than moderate"
  - "Where the impairment of a body function is the product of both organic and mental conditions, it will not fall within para (a) unless it is predominantly the product of the organic condition": TAC v Kamel [2011] VSCA
  - Mental harm injuries must satisfy the "severe " test- i.e PTSD.

- **SERIOUS INJURY LITIGATION**

If the TAC refuses to grant a Certificate or the TAC is deemed to have refused to grant one (when the TAC exceeds the time frame for making a decision and the claimant has put the TAC on notice) , the claimant is able to issue an Originating Motion to the County Court seeking leave to commence a common law claim.

- **COMMON LAW DAMAGES RESOLUTION**

If the TAC is the only CTP insurer on risk in the common law claim, and the TAC or court has granted a certificate or leave, the protocols require the parties to attend a settlement conference for the purpose of discussing settlement.

- **COMMON LAW LEGAL COSTS UNDER THE PROTOCOLS**
  - The TAC will pay a set fee for the claimant's legal costs if the common law claim is resolved in the protocol process.
  - The protocol fee is in addition to legal costs payable if the claimant is successful in the Originating Motion.
  - The fee is indexed and allows for uplifts where liability is denied or financial documents are provided, plus counsel's fees or a set fee if a solicitor attends the settlement conference without counsel.

- TIME LIMITS FOR COMMON LAW PROCEEDINGS

The *Limitation of Actions Act* 1958 allows a claimant 6 years from the date of the injury/accident to commence a common law proceeding- issue a Writ at Court.

The TAC will waive the limitation period if it is the only CTP insurer on risk and a request is made before the expiry of the 6 year period:

- The TAC will impose a condition that the claimant lodge a Serious Injury Application under the protocols within 3 months from the date the waiver is granted.
- The TAC will also require that the claimant issue an Originating Motion within 28 days of the date that TAC refuses to grant a certificate.
- If a certificate is granted by TAC or leave granted by the Court, and the common law claim does not resolve at a conference the claimant has 28 days to issue a Writ.

GMP LAW WILL FIGHT FOR THE MAXIMUM BENEFITS YOU'RE ENTITLED TO.

MEDICAL NEGLIGENCE

In Australia, we are all fortunate enough to have access to some of the most advanced medical treatment and health services in the world, but sometimes, despite best efforts, doctors and treatment providers cause unnecessary injuries and damage when their services fall below the acceptable standard of care. This is often referred to as medical malpractice or “negligence”, as it is more commonly known.

Sadly, doctors and treatment providers negligence can cause significant damage, both physically and psychologically to an individual and there are debilitating complications and needs for expensive ongoing treatment or medication arising from the negligent act.

Family members almost always suffer some form of nervous shock. Usually, this arises after being informed by a doctor or treatment provider that a loved one’s procedure/treatment didn’t go as expected and that they have suffered some form of usually serious complication or injury. Loved ones of course are forced to live through this trauma with the injured person. Fortunately, **the law recognises that it is reasonably foreseeable for close family members to suffer nervous shock or develop a psychological condition** in such circumstances which may also entitle them to compensation.

- ## ELEMENTS OF NEGLIGENCE

Generally speaking, there are a number of elements that exist in a medical negligence claim that would give rise to a finding in negligence. An injured person must show:-

1. That they were owed a duty of care; and
2. That there was a breach of that duty; and
3. As a consequence of that breach, damage or injury have been occasioned which might have been avoided but for the negligent act.

- ## EXAMPLES OF TREATMENT WHERE NEGLIGENCE MAY OCCUR.

Claims for medical negligence are not limited to treatment provided by a doctor or hospital. They can extend to the following treatment providers/institutions:-

- Treatment received by a Chiropractor or osteopath, for example, neck manipulations leading to dissection and stroke.
- Treatment by physiotherapists for example, advice to mobilise prematurely after suffering a fracture leading to more serious injury and damage.
- Dental malpractice, for example removal of a wisdom tooth without proper x-rays to identify the location of the nerve with consequent nerve/jaw damage.
- Nursing Home Negligence such as lack of supervision in a patient that ought to have been assessed as a falls risk resulting in a fall or injury which may otherwise have been avoided with proper risk assessments and adequate supervision.

- General Practitioner and doctor negligence- including failure to carry out proper tests/investigations, failure to correctly interpret test results, failure to refer to a specialist, failure to prescribe correct medication, failure to diagnosis or misdiagnosis etc.
- Hospital negligence, this includes treatment received in the emergency department or as inpatient, for example, failure to carry out relevant tests/investigations, failure to properly interpret tests or investigations, failure to properly diagnose or treat a particular condition, discharging a patient when it may have been inappropriate to do so, incorrectly administering the incorrect medication or dosage etc.
- Negligence in nursing, for example failure to identify a fall's risk and implement adequate measures, failure to administer correct medication or correct dosage, failure to correctly insert tubing or other equipment resulting in injury or death.
- Radiology Centre Negligence, for example incorrectly reporting on an x-ray, CT scan MRI scan or any other radiological investigation
- Pharmacy errors such as dispatch of wrong drugs or incorrect dosage)
- Incorrectly performed operation or other procedure
- Misdiagnosis or failure to diagnose
- Failure to inform (or a delay in informing) about test results or similar key information
- Failure to warn about side effects or risks
- Obstetric malpractice, negligence and mistakes for example a failure to carry out the correct testing or to interpret the testing correctly, failure to identify congenital birth defects, failure to identify foetus distress during labour and act accordingly etc.
- Cosmetic and plastic surgery malpractice- such as incorrectly performed operations or procedures or failing to provide the correct aftercare resulting in wound breakdown or infection.

Of course, **this list is by no means exhaustive** and there may be other scenarios and examples of treatment not mentioned above which may still give rise to a valuable claim. If you are in doubt, it doesn't cost you anything to seek legal advice and take advantage of the "no win, no fee" services that most firms offer.

- WHAT SHOULD I DO IF I HAVE SUFFERED AN INJURY?

If you have suffered an injury or complication and you believe it arose due to a negligent act, it is always best to attend to the following matters:-

1. Report the injury to the treating doctor/provided and demand a meeting to discuss your concerns. Sometimes, public hospitals will conduct an internal review and often may request a Roots Causes Analysis (RCA report) which can be very helpful as it almost always identifies the errors that occurred leading to injury or death.
2. In some cases, and subject to obtaining legal advice beforehand, it may be beneficial to report the injury and malpractice to the local branch of the Health Care Complaints Commission (HCCC) in your State. This can be done by filling out a complaints form. The HCCC will usually write to the doctor in question requesting answers to various questions concerning the treatment in question. Again, it would not be prudent to do this on your own volition unless you've sought legal advice as to the pros and cons of taking this course of action.
3. In the case of the death of a loved one, an autopsy or post-mortem followed by a coronial inquest can also be quite useful in determining the cause of death.

- CAN I CLAIM ON BEHALF OF A DECEASED FAMILY MEMBER?

Often, a negligent act could result in death. A common question that arises frequently is whether the family can make a claim in circumstances where a father, mother, son or daughter may have passed away.

Close family members are generally entitled to a claim for the nervous shock suffered following the death of a loved one. In some circumstances, there may also be rights to make a claim under the Compensation to Relatives Act for such things as funeral expenses, loss of financial and non-financial contributions that were being provided by the deceased to the household.

- THE PROCESS OF A MAKING A CLAIM

Injured persons can make a claim by engaging a competent personal injury firm of solicitors to represent them. The process of claiming varies from state to state.

- NEW SOUTH WALES

In NSW, no formal documents are required to be formally served in order to make a claim. A lawyer can simply request your clinical records from all of the relevant treatment providers and proceed from there. There are no provisions that require notice to be given to the doctor or treatment provider. The law governing medical negligence claims in NSW is contained in Sections 5O – 5N of the *Civil Liability Act* 2002 (NSW).

Section 5O provides that a court is prevented from making a finding of negligence against a defendant professional where it can be shown that he or she acted in accordance with a practice widely accepted as being competent by peer professional opinion , unless that opinion is irrational.

- DUTY OF CARE – SECTIONS 5B AND 5C CIVIL LIABILITY ACT NSW

The meaning of reasonable foreseeability has been adapted from law handed down through the court system known as the common law.
A risk is foreseeable if the person knew of it or ought to have known of it. It also has to be not an insignificant risk and a reasonable person would have taken precautions to prevent that risk. The Act then provides a further list of criteria to ascertain whether a reasonable person would have taken precautions. These factors include:

- the probability that the harm would occur if care were not taken;
- the likely seriousness of the harm;
- the burden of taking precautions; and
- the social utility of the activity which creates the risk of harm.

These last provisions cause considerable problems with their interpretation by the court. The issue of the “burden” of taking precautions is further clarified in the Act where it is confirmed that such precautions also would include the burden of taking precautions to avoid similar risks of harm to the one under consideration. Liability is not affected by:

- the fact that a risk could have been avoided by doing something in a different way;
- the subsequent taking of action that would have avoided a risk (had the action been taken earlier). This is obviously intended to avoid the “wisdom of hindsight”.

- ASSUMPTION OF RISK – SECTIONS 5F – 5I

No duty of care to warn another person of a risk that is "obvious" unless:

- the plaintiff requested information about the risk;
- there is a requirement in the written law to warn; or
- there is a risk of death or injury from professional services.

'Obvious risk' means:

- a risk that is obvious to a reasonable person in the injured person's position;
- matters of common knowledge.

Risks can be obvious even though there is a low probability of occurrence. They can also be obvious even though they are not prominent, conspicuous or physically observable.

A person is presumed to be aware of an obvious risk unless they can prove that they were not aware of it. For these purposes, the person does not need to be aware of the precise risk but merely the type or kind of risk – the onus is on the injured person.

'Inherent risk' is a risk of something occurring that cannot be avoided by reasonable care and skill.There is no liability in respect of an inherent risk but it does not excuse defendants who still have a duty to warn people of them.

A detailed Chronology always needs to be prepared and a concise letter of instruction needs to be sent an expert in the relevant field of practice. The letter of instructions usually contain some very carefully crafted questions as to liability, causation, breach and in some cases damage. A tele conference is usually arranged with the expert to vent out the relevant issues before a final report is written. It is crucial to obtain an opinion that clearly states that the medical treatment provided falls below the accepted standard of care.

Once a supportive report is obtained, proceedings can be commenced in either the District Court of the Supreme Court.

A summary of the general time frames and the process of claim in NSW is contained below for ease of reference:-

1. Engage a lawyer.
2. Obtain clinical records from the doctors and hospitals -16-20 weeks.
3. Prepare a Chronology and Letter of Instructions 20-30 weeks.
4. Brief Counsel – 40-50 weeks.
5. Commence Court proceedings – 52- 70 weeks.
6. Pre-Trial Conference – 86 weeks.
7. Status Conference 98 weeks.
8. Mediation – 104 weeks.
9. Hearing – 126 weeks.

- QUEENSLAND

In QLD you have one month after consulting a lawyer to serve a Section 9A notice, which is technically a letter of demand setting out the impending cause of action.

Then once you've done the notice you have 12 months to do the PIPA application form which must be accompanied by an expert report.

Technically The limitation is strictly 3 years from the date the cause of action arises and is not based on discoverability. In other words, the 3 year limitation period is more strict and extensions will only be granted with the leave of the court in exceptional circumstances.

The law governing medical negligence in QLD is contained in the *Personal Injuries Proceedings Act* 2002 (QLD).

Section 9A(1) of the PIPA act states:
'This section applies to a claim based on a medical incident happening on or after the commencement of this section that is alleged to have given rise to personal injury.' (emphasis added)

Section 9A(14) provides a definition of 'medical incident':
'medical incident means an accident, or other act, omission or circumstance involving a doctor happening during the provision of medical services.' (emphasis added)

A summary of the process of claim in QLD is as follows:-

1. Engage a Lawyer.
2. Serve 9A notice of claim – within 4 Weeks month of engaging a lawyer.
3. Obtain Clinical records from the doctors and hospitals – 20-24 weeks
4. Prepare a Chronology and Letter of Instructions – 30-36 weeks
5. Brief Counsel – 36 weeks
6. Serve PIPA form 1 & 2 within 12 months of engaging a lawyer.
7. Attend Compulsory Conference – within 4 months of serving PIPA.
8. Commence Court proceedings – 1 months after compulsory conference Pre-Trial Conference – 4 months after commencement of proceedings
9. Status Conference 8months after commencement of proceedings
10. Mediation – 12-15 months from commencement of proceedings.
11. Hearing – 8-12 months from the mediation date.

- AUSTRALIAN CAPITAL TERRITORY

In ACT, the law requires the claimant to serve a notice of claim onto the potential defendant within the earlier of nine months of the incident or appearance of symptoms or four months of instructing a lawyer regarding the possible claim and the defendant being identified.

In ACT, the law relating to limitation is similar to NSW in that the time for commencement of proceedings is 3 years from the date of the accident or 3 years from when the cause of action first becomes discoverable. In the case of a child the limitation period is six years.

The law is contained in Sections 42-44 of the *Civil Law Wrongs Act 2002* (ACT).

The process of making a claim can be summarised as follows:-

1. Engage a Lawyer.
2. Serve notice of claim – within 9 months of the incident or injury or 4 months of engaging a lawyer
3. Obtain Clinical records from the doctors and hospitals – 4-6 months after engaging a lawyer.
4. Prepare a Chronology and Letter of Instructions – 2-3 months after receiving all clinical records.
5. Brief Counsel – 1 month after receiving supportive expert's opinion.
6. Commence Court proceedings – 1 months after compulsory conference Pre-Trial Conference – 4 months after commencement of proceedings
7. Status Conference 8 months after commencement of proceedings
8. Mediation – 12-15 months from commencement of proceedings.
9. Hearing – 8-12 months from the mediation date.

- VICTORIA

In Victoria, there is no formal requirement to serve a notice of claim onto a prospective defendant in medical negligence matters.

Two things are required prior to proceedings being commenced:-

1. A supportive experts report on the issue of liability; and
2. A Serious Injury Certificate as required by the Wrongs Act 1958 (VIC). The serious injury certificate needs to certify that your physical injuries exceed 5% whole person impairment pursuant to the AMA guidelines 5th Edition or 10% whole person impairment under the AMA 5th Edition guidelines if you have psychiatric injuries.

In Victoria, you must bring a claim within 3 years from the date that you discover or should have discovered all of the following facts:-

- That an injury has occurred;
- That the injury was caused by the fault of another;
- That the injury is sufficiently serious to justify the bringing of a claim.

In the case of a child or a person under a disability, a claim must be commenced within 6 years of the date the above facts were or should have been discovered.

You must act reasonably to discover these facts. Delay in discovering these facts may prevent from making a claim for compensation.

Below is a timeline which gives you a guide as to the process involved in bringing a claim in Victoria:

1. Engage a lawyer
2. Obtain clinical records from the doctors and hospitals -16-20 weeks
3. Prepare a Chronology and Letter of Instructions 20-30 weeks
4. Brief Counsel – 40-50 weeks
5. Arrange a medical examination for purposes of a serious injury certificate 52-70 weeks
6. Commence Court proceedings – 52- 70 weeks
7. Pre-Trial Conference – 86 weeks
8. Status Conference 98 weeks
9. Mediation – 104 weeks .
10. Hearing – 126 weeks

- DAMAGES

Damages vary between the jurisdictions but generally speaking if you can establish all of the elements of negligence, you may be entitled to an award for damages which includes the following:-

1. General Damages for pain and suffering.
2. Past and future treatment expenses.
3. Past and future loss of earnings.
4. Past and future domestic assistance or homecare.

If your injuries are serious enough to prevent you from working, then you may also have rights to make a claim for Total and Permanent Disablement (TPD).

Having the correct legal team with extensive knowledge about the intermingling connection between the law and the medicine in these types of matters is paramount as often, inexperienced lawyers commonly make the mistake of dismissing a matter as not being viable due to lack of skill or experience. A skilled legal practitioner will be able to dissect all of the medical material and consider all the available angles and options including a thorough discussion with the experts on the telephone in order to maximise your chances of success in bringing a claim.

OUTLINE OF THE LAW FOR PUBLIC LIABILITY CLAIMS

- ## PUBLIC LIABILITY CLAIMS

Claims of this nature encompass all injuries which may occur on public or private premises where a person is injured on account of the negligence of the owner or occupier of those premises. Examples of such claims involved falls along uneven footpaths, slip and fall in a shopping centre, injuries at a friend's house or struck by an awning at a Café.

The examples are endless but one thing remains the same, that if an owner or occupier of a space fails in their duty of care and someone is harmed as a result, that person might be able to bring a negligence claim under the *Civil Liability Act 2002* (NSW) or the *Personal Injuries Proceedings Act 2002* (QLD) or *The Wrongs Act* 1958 (Vic) with **claims needing to be commenced within 3 years of the date of accident** (subject to some exceptions which you need to clarify with your solicitor).

- ## WHAT TO DO AT THE TIME OF THE INCIDENT

Owners and occupiers will not always protect evidence or assist in claims as it is your obligation, and that of your legal representatives, to determine that the owner or occupier was negligent in their actions.

So as to assist in maximising the compensation to you it is important that you do as much as possible at the time of the incident.

Below is set out some simple things that will assist you in ensuring we hold the owner or occupier responsible for the injuries you have suffered:

1. Photos of the incident site including any images of the item, liquid or other object that may have caused the injury;
2. Take note of your surroundings, in particular any effect a contaminant or object may have had on your clothing i.e. Wet leg from water on the floor;
3. Look around to observe if there is any CCTV cameras;
4. Notify the owner, occupier or if in a store the manager immediately;
5. Ensure an incident report, or record of the incident is take;
6. Obtain the names and phone numbers of any persons that may have witnessed the incident;
7. If necessary, attend a doctor or hospital immediately.

If you did not do all these things at the time of the incident do not be alarmed as 80% to 85% of the people we speak to at GMP have not obtained the above information, or have limited information on some of the points. Our knowledge and expertise as personal injury lawyers will allow us to assist you and guide you through the process.

THE PROCESS OF A MAKING A PUBLIC LIABILITY CLAIM IN NSW

- INVESTIGATION / LIABILITY STAGE

In NSW a formal claim form is not necessary however the relevant owner or occupier should always be put on notice of the claim promptly.

Investigations are then commenced into the possible culpability of the owner or occupier and this involves gaining access to the incident report, photographs, witness statements, investigations reports, inspection reports, repair invoices and so forth. This stage is quite extensive and with your assistance, as outlined above, we will be in a position to obtain expert evidence to support your claim.

- MEDICAL INVESTIGATION STAGE

Following the liability investigation stage we move into the medical evidence stage. This will involve assessing all the injuries you have suffered and the impact this has had on you as a whole. We will not detail this here anew as this guide details quite specifically how to maximise each area of damage.

- LITIGATION STAGE / POTENTIAL SETTLEMENT STAGE

We now move into the second last stage of a claim being the litigation stage. This is where proceedings are commenced in either the District Court of NSW or the Supreme Court of NSW.

During this stage all evidence we have gathered to date is provided to the defendant, being the owner/occupier, and in return they provide us with any potential rebuttal evidence they may have gathered.

During this stage you are likely to meet one of our barristers, who work on the same “No Win No Fee” principles as we do and also attend a settlement conference or mediation. At this stage you will be provided with comprehensive advice about the value of your claim, prospects of winning the claim and advice on a reasonable settlement amount,

It is important to note that the vast majority of cases settle during this period, as high as 95%.

- HEARING STAGE

This is the final stage of your matter and only a very small portion of matters get to this stage, and of those matters possibly only 1% – 2% actually get to see a Judge.

During this stage you will have significant contact with your barrister and solicitor as we prepare to present your case before the Court.

There are usually opportunities to resolve the claim and often a flurry of offers go back and forth in the days leading up to a hearing.

- GENERAL TIMELINE FOR NSW MATTERS

We adopt the above stages outlined above and provide a progressive timeline for works to be undertaken in your matter:

1. Initial Conference with Injured Person;
2. Liability investigations (0 – 5 months post initial conference;
    a. Title search
    b. Letter of Demand
    c. Witness statements
    d. Statement form client
    e. Obtain photos
    f. Brief expert
3. Medical Investigations upon stability (5 – 10 months post initial conference)
    a. Obtain clinical records from all providers
    b. Obtain receipts
    c. Obtain treatment reports
    d. Attend solicitor arranged medical appointments
    e. Obtain expert reports on damages
4. Litigation Stage (12 – 14 months post initial conference/accident)
    a. Brief barrister
    b. Draft Court Documents
    c. Collate medical and liability evidence
    d. Attend pre-trial conferences and directions
    e. Attend defendant arranged medical appointments
5. Potential settlement stage (12 – 14 months post commencement of proceedings)
    a. Attend Settlement conference or Mediation
    b. Prepare detail schedule outlining potential value of claim
    c. Calculate any repayments to Medicare, Private Health Insurance, Income protection, Centrelink or any other relevant 3rd party
6. Hearing Stage (18 months post commencement of proceedings
    a. Update and review all evidence
    b. Attempt to resolve the claim through further discussions with the defendant's legal representation
    c. Attend hearing as a final resort

THE PROCESS OF A MAKING A CLAIM PUBLIC LIABILITY IN QUEENSLAND

Whilst much of the same principles as outlined for claims in NSW apply in QLD there are some procedural differences which vary the time line.

In QLD you must serve a PIPA Claim form on the person, business or entity you believe to be at fault within 9 months of the date of accident or 1 month of seeing a lawyer, whichever date is sooner.

Once this occurs the potential defendant must identify if they are the correct person to be claiming against and will also be required to investigate liability ultimately making a section 20 determination as to whether they accept liability or not. Quite unsurprisingly GMP has seen few cases where an owner or occupier accept responsibility and it is our role to ensure you are compensated.

Once liability investigations are complete the medical investigation stage is engaged and this stage is largely similar to the NSW process with the exception of full disclosure. A key difference between the states is that in QLD any medical report or statement obtained MUST be served on the other party so as to facilitate discussions.

Once the medical and liability investigations are complete the parties MUST participate in a Compulsory Conference. It is at this stage that the vast majority of cases are resolved as all evidence must be served on each party prior to this conference and final written offers must be exchanged. Such written offers hold cost consequences at trial and as such each party takes this very seriously and only a hand full of cases go beyond this point.

The final hearing stage is rare in QLD and whilst there are cases before the Courts they are few and far between.

- GENERAL TIMELINE FOR QLD MATTERS

1. Initial Conference with Injured Person;
2. Lodge claim for (0 – 1 month post initial conference)
3. Liability investigations (0 – 3 months post lodgement of claim form);
    a. Await section 10 and section 20 response
    b. Witness statements
    c. Obtain photos
    d. Brief expert
4. Medical Investigations upon stability (5 – 14 months post initial conference)
    a. Obtain clinical records from all providers
    b. Obtain receipts
    c. Obtain treatment reports
    d. Obtain expert reports on damages
    e. Serve all on defendant
5. Defendant Evidence Stage (1 - 6 months post service of evidence)
    a. Attend defendant arranged medical appointments
    b. Receive served documents
6. Compulsory Conference stage (2 – 6 months post service of all evidence)
    a. Attend Settlement conference or Mediation
    b. Prepare detail schedule outlining potential value of claim
    c. Calculate any repayments to Medicare, Private Health Insurance, Hospitals Income protection, Centrelink or any other relevant 3rd party
    d. Final Mandatory Offer made with cost consequences
7. Litigation Stage (1 month post-closing of Final Offer)
    a. File formal court proceedings
    b. Update and review all evidence
    c. Attend mediation
8. Hearing stage (12 months post commencement of proceedings in litigation stage)
    a. Attend hearing as a final resort

THE PROCESS OF A MAKING A PUBLIC LIABILITY CLAIM IN AUSTRALIAN CAPITAL TERRITORY

Much of the same principles as outlined for claims in NSW and QLD apply in the ACT, however there are some procedural differences.

In the ACT you must personally serve a Notice of Claim Form on the person, business or entity you believe to be at fault within 9 months of the date of accident or 4 months of seeing a lawyer, whichever date is sooner.

Once the claim form is lodged the defendant, pursuant to section 61, is required to undertake a number of steps;

1. Take reasonable steps necessary to find out about the accident giving rise to the personal injury claim;
2. Give the claimant notice, pursuant to section 69, as to whether liability is admitted or denied and if contributory negligence is claimed; and
3. Make an offer of settlement or invite the injured person to make an offer of settlement.

Once liability investigations are complete the medical investigation stage is engaged and this stage is largely similar to the NSW and QLD process. Once the medical and liability investigations are complete the parties will exchange offers with the view to resolve the matter prior to the commencement of formal court proceedings.
The final hearing stage is the final stage of the matter. Even in this stage there is often the possibility of engaging in further settlement discussions prior to final determination by a Judge.

- GENERAL TIMELINE FOR ACT MATTERS

1. Initial Conference with Injured Person;
2. Lodge claim for (0 – 4 months post initial conference)
3. Liability investigations (0 – 3 months post lodgement of claim form);
    a. Await section 69 response
    b. Witness statements
    c. Obtain photos
    d. Brief expert.
4. Medical Investigations upon stability (5 – 14 months post initial conference)
    a. Obtain clinical records from all providers
    b. Obtain receipts
    c. Obtain treatment reports
    d. Obtain expert reports on damages
    e. Serve all on defendants.
5. Defendant Evidence Stage (1 - 6 months post service of evidence)
    a. Attend defendant arranged medical appointments
    b. Receive served documents.
6. Offer Stage (2 – 6 months post service of all evidence)
    a. Exchange Offer, Attend Settlement conference or Mediation
    b. Prepare detail schedule outlining potential value of claim
    c. Calculate any repayments to Medicare, Private Health Insurance, Hospitals Income protection, Centrelink or any other relevant 3rd party.
7. Litigation Stage (1 month post failure of settlement discussions)
    a. File formal court proceedings
    b. Update and review all evidence
    c. Attend mediation.
8. Hearing stage (12 months post commencement of proceedings in litigation stage)
    a. Attend hearing as a final resort.

THE PROCESS OF A MAKING A PUBLIC LIABILITY CLAIM IN VICTORIA

- GOVERNING LEGISLATION

The *Wrongs Act* 1958 (Vic) ("Wrongs Act"), is the main legislation in Victoria that applies to common law claims for damages for personal injury in cases other than workplace injuries or transport accidents.

- WHAT IS A SIGNIFICANT INJURY?

To be able to successfully establish a claim for public liability, the Wrongs Act 1958 (Vic) requires the injured person to have suffered significant injury. Injury means personal or bodily injury and includes prenatal injury, psychological or psychiatric injury, disease and aggravation, acceleration or recurrence of an injury or disease.

Some injuries are defined to be significant injuries without any further assessment. These are loss of a foetus, loss of a breast or psychological or psychiatric injury arising from the loss of a child due to an injury to the mother or foetus or child before, during or immediately after the birth and asbestos-related conditions.

For other kinds of injury, a determination of what constitutes a significant injury will usually require an assessment of the degree of impairment caused as a result of the injury.

- IMPAIRMENT THRESHOLD

For a significant injury to be established, the injured person much be assessed by a medical practitioner. The degree of permanent impairment must satisfy the relevant threshold level in order to be a significant injury.

The relevant threshold levels are:

- 10% or more for psychiatric injury;
- 5% or more for spinal injuries; or
- More than 5% for injuries other than psychiatric or spinal injuries.

An assessment of the degree of impairment must be made by an approved medical practitioner, who must follow certain guidelines and methods in order to make the assessment. All impairments sustained due to injuries arising from the incident must be included in one assessment. However, psychiatric or psychological impairment that arise as a secondary consequence of a physical injury must be ignored in calculating the degree of impairment.

The approved medical practitioner must then provide the claimant with a certificate of assessment stating whether or not the degree of impairment satisfies the relevant threshold level. The practitioner must not state the specific degree of impairment in the certificate of assessment. A certificate may be issued whether or not all the injuries have stabilised.

- PROCESS OF ASSESSING IMPAIRMENT

Once a certificate of impairment has been issued by the claimant's medical practitioner and that the degree of impairment exceeds the threshold of the Wrongs Act, a number of forms must be served on the respondent including:

1. Form 1 or 2 of the Schedule to the Wrongs (Part VBA Claims) Regulations 2015 which requires the claimant's certificate of assessment as to degree of impairment [for stabilised and not yet stabilised claimants]; and
2. Form 4 of the Schedule to the Wrongs (Part VBA Claims) Regulations 2015 which outlines the Claimant's personal details and information relating to the accident.

The Wrongs Act allows a respondent to agree to waive the requirement for an assessment of degree of impairment based on the claimant's certificate. A request by a claimant for the respondent to waive the assessment requirement requires the respondent to serve Form 3 of the Schedule to the Wrongs (Part VBA Claims) Regulations 2015.

If the respondent receives a Certificate of Assessment from the claimant, the respondent can either accept the assessment or refer a medical question in relation to the assessment to a Medical Panel for determination.

In these circumstances, **a 'medical question' means a question concerning whether or not the degree of impairment resulting from the injury to the claimant alleged in the claim satisfies the threshold level.**

A medical panel is usually constituted by two or more medical practitioners who have been appointed to a list of practitioners eligible to be nominated to a medical panel by the Governor in Council. Once a matter has been referred to the panel, they may ask a claimant to meet with them to answer questions, to supply them with relevant documents or to submit to a medical examination by the panel or a member of the panel. The medical panel may also, with the consent of the claimant, ask a registered health practitioner who has examined the claimant to meet with the panel, answer questions or to supply relevant documents.

The respondent who referred the medical question to the panel will be required to cover any fees and costs associated with the referral. The referral is made in writing and sets out the medical question and the information prescribed in Regulation 9 (Form 5) to the medical panel.

After assessing the degree of impairment of a claimant, **a medical panel may issue a certificate of determination on whether the degree of impairment satisfies or will (after injuries have stabilised) satisfy the threshold level.** A panel must not state the specific degree of impairment when making this determination.

Where the panel is unable to determine the medical question (for example, because the injury has not stabilised and the panel cannot determine whether the degree of impairment will satisfy the threshold level once the injury stabilises), the panel may set a time for further assessment within 12 months from the first assessment.

The claimant must file certain documents in court in relation to a claim for damages for non-economic loss. These are set out in section 28LZM of the Wrongs Act, and include, where relevant, the certificate of assessment or agreement to waive assessment, a copy of the medical panel certificate of determination, a statement of deemed acceptance of the assessment or deemed significant injury.

A determination by a medical panel regarding the threshold level of impairment must be accepted by a court in any subsequent proceedings concerning the claim. However, there are limited rights to appeal from an opinion of a medical panel.

A claimant may apply to a court for a determination of significant injury in certain limited circumstances. The court may determine significant injury if it is satisfied that the claim is urgent because of the imminent death of the claimant and the injury would be a significant injury.

- DAMAGES FOR NON-ECONOMIC LOSS

Part VBA of the Wrongs Act provides for the recovery in limited circumstances of damages for non-economic loss, such as, pain and suffering, loss of amenities of life, or loss of enjoyment of life. Under Part VBA of the Wrongs Act, a person (the claimant) can only recover damages for non-economic loss caused by the fault of another person (the respondent) when the injury is a ‘significant injury’.

The maximum amount of damages that may be awarded to a claimant for non-economic loss is $577 050. In determining damages for non-economic loss, a court may refer to earlier decisions of that or other courts for the purpose of establishing the appropriate award in the proceedings.

DAMAGES AND VALUE OF A PUBLIC LIABILITY CLAIM

The balance of this guide identifies the various heads of damages that can be claimed. Damages vary state to state and it is important that the relevant legislation is reviewed and pursued.

Most States, subject to specific legislation, allow an injured person to obtain compensation for:

1. Pain and Suffering;
2. Past and Future Treatment Expenses;
3. Past and Future Wage Loss; and
4. Past and Future Domestic Care and Assistance.

Each State varies on how these damages are calculated however, subject to medical evidence, by and large actual losses are recovered for any past expenses, wages and care (with threshold limits) and then projected forward for their future counterparts.

Pain and Suffering is a little different and is contingent on the specific legislation applicable to the case. **In NSW** pain and suffering is assessed under Section16 of the Civil Liability Act 2002 (NSW). This compares the person's injury to the most extreme cases (examples of the most extreme case include quadriplegia, psychiatric institutionalisation and severe burn) and then places a person's injuries on that scale with a corresponding percentage and dollar value.

In QLD a similar process is adopted however a percentage is derived from medical assessments using the AMA 5th edition which determines the level of injury and impairment a person has. This then allows you to utilise the Civil Liability Regulation 2014 (QLD) and the Injury Value Scale to determine the monetary value of the pain and suffering component.

In the ACT pain and suffering is governed by the common law. What this means is that Judges use their experience and past decisions of the Court to determine an appropriate amount of compensation for Pain and Suffering. This is highly contingent on subjective factors and past decisions.

Having the correct legal team with extensive knowledge about liability and medical issues can make all the difference in maximising your compensation. Often inexperienced lawyers commonly make the mistake of dismissing a matter as not being viable due to lack of skill or experience.

A skilled legal practitioner will be able to dissect all of the issues and consider all the available angles and options including a thorough discussion with the experts on the telephone in order to maximise your chances of success in bringing a claim.

IMPORTANT ELEMENTS TO CONSIDER FOR YOUR PUBLIC LIABILITY CLAIM

Slip and fall incidents- Shopping centres and supermarkets:

- Was the floor wet or contaminated with food?
- Is CCTV available to see if the cleaning regime is being adhered to?
- CCTV should be provided a minimum of 30 minutes prior to the incident.
- Terrazzo and vinyl will 99.9% be slippery when wet.
- Does the Defendant have a cleaning regime?
- Shopping centres allow patrons to walk around the centre with food and beverages.
- Many stores sell some food or drink, was there a food or beverage store near your fall?
- Food areas and entrances require a higher slip resistance.
- Many shopping centres have pop up stores, was this the case for your fall?
- 99.9% of dry tests will comply with Australian Standards.
- Some shopping centres engage cleaners with a contract that states cleaning rotations of 15minutes and slip testing conducted once a year.
- What could the Defendant have done, different surface, slip resistant treatments, rubber mats?
- Reports are not an accurate indication that the area was cleaned.

Slip and falls in other areas:

- Wet areas require a high slip resistance.
- External walkways require a high slip resistance.
- Ramps require a higher slip resistance and also require handrails.
- What regime does the shopping centre do in inclement weather?

Falls down stairs:

- 90% of stairs do not comply with Australian Standards or Building Code of Australia.
- Were there handrails?
- Was there contrasting nosing strips?
- Treads should be slip resistant or have a slip resistant nosing.
- Sizes of treads cannot differ more than 5mm.
- Risers cannot differ more than 5mm.
- Some Standards and Building Codes have changed over the years, especially with provisionsto handrails on Class 1 buildings (Single dwellings).
- Was lighting a factor, will a light test be required?
- Did you slip or miss-step off the nosing edge?
- Timber steps are usually slippery.

Trips and falls:

- Did you know that 5mm is a trip hazard in a path of travel.
- Could you have taken another pathway?
- Was the hazard obvious (was it marked in any way)?
- Was lighting a factor, will a light test be required?
- Were there any complaints to Defendant's that a potential hazard was there? This is very important for a case against a local Council.
- Have you tripped on a floor mat, has it been fixed down, how was it stored when not inuse.
- Wheel stops and kerbs in carparks are hazards, they must be highlighted in accordance with Australian Standards.

Falls from Heights:

- Were there handrails provided and were they adequate?
- Was your ladders secure, top and bottom?
- Was the scaffolding adequate and signed off by a licensed scaffolder?
- Should another system have been used?

Musculoskeletal Injuries (Back, neck, shoulders, arms, hands):

- Were you inducted into the company's safety system?
- Have you been given any manual handling training? If so when.
- Does the manual handling training cover the tasks you were required to undertake?
- Is your work repetitive?
- Are you required to work at pace?
- Are you provided with any mechanical assistance (trolleys, lifters, forklifts)
- Was the worksite cluttered?
- Was lighting an issue?
- Was the machinery provided with guards?
- Was the machinery regularly and routinely maintained?
- Was the person using the machinery adequately trained in that machinery?
- Was the person using the machinery licenced or competent in the use of the machine?
- Were you provided with adequate rest breaks?
- Were you completing work above shoulder height?
- Did the work involve vibration (e.g.jackhammer, continually drilling)?
- Were you supervised, did the supervisor check your manual handling?
- Are you from a non-English background?

TOTAL PERMANENT DISABLEMENT CHECKLIST

1 CIRCUMSTANCES OF THE ACCIDENT

Who is at fault?

- Does your enquiry relate to an insurance claim against super/insurer? If yes proceed.
- Have you ceased work as a result of injury/illness? If Yes proceed with (2).

2 THE STARNDARD TPD DEFINITION

- What was the date and nature of your Injury?
- What was the date you last worked, and on what basis did you work (e.g. full-time etc.)?
- Is there a clear connection between the injury and date last worked? If no, proceed with (3)

3 ALTERNATIVE TPD DEFINITIONS: APPLICATION

Is there TPD eligibility under any of the following?

Are you unable to perform home duties as a result of injury/illness? 4 out of the 5 below:

- cleaning your home;
- shopping for food and household items;
- meal preparation;
- laundry services; and
- caring for a child or dependant.

Are you unable to perform activities of daily living as a result of injury/illness? 2 out of the 5 below:

- Washing
- Dressing
- Feeding
- Continence
- Mobility:
  - Unable to walk more than 200m without stopping due to breathlessness or discomfort.
  - Cannot bend, kneel or squat to pick something from the floor.

Do you require assistance to:

- get in and out of bed; and
- get on or off a chair/toilet;
- move from place to place without using a wheelchair.

Have you suffered loss of Cognitive Functioning?

- Does your enquiry relate to an insurance claim against super/insurer? If yes proceed.

Have you suffered total and irrecoverable loss of use of limbs and/or sight?

- the use of two limbs; or
- the sight of both eyes; or
- the use of one limb and the sight of one eye, where a limb means the whole hand below the wrist or the whole foot below the ankle.

Whole Person Impairment (WPI)

- A level of WPI typically 20% or above.

If yes to any of the above proceed with (4) below.

4 ALTERNATE TPD DEFINITIONS: DEATILS

- What is the date and nature of your Injury?
- What was the date you last were able to perform home duties or activities of daily living?
- What are the details of the home duties or activities of daily living you are unable to perform?
- What cognitive loss have you endured?
- What loss of limb use or sight have you endured?
- What is your Whole Person Impairment?

AT GMP WE WILL FIGHT FOR YOUR LEAGL RIGHTS

GMP GERARD MALOUF AND PARTNERS solicitors & barristers

OUTLINE OF THE LAW FOR WORKERS COMPENSATION CLAIMS

- ## WORKERS COMPENSATION CLAIMS

Workers' compensation is the payment that companies make to their employees who have been injured on the job. Typically, this works as a form of insurance that employers pay into. As a result, the exact payout of a workers' compensation package is typically worked out with an insurance company, although the exact rules vary by state.

Workers' compensation can cover a large variety of work-related physical and psychological injuries or illnesses. In general, if your injury or illness was incurred at work you may have a potential case. Consulting an experienced legal team can help you to determine if your injury is sufficient for a claim.

To be eligible for workers' compensation, you must report your injury and consult a medical professional, who will give you a medical certificate that says your injury is legitimate. After that, you'll be able to submit a claim for workers' compensation. This claim should be made within three months of your injury, however, this is not a strict deadline.

- ## SUMMARY OF WORKERS COMPENSATION CLAIMS IN NSW

In New South Wales, the Workers Compensation Act 1987 governs the no-fault statutory scheme.

Under this scheme, claimants can be eligible for weekly payments for the first 13 weeks at 95% of pre-injury average weekly earnings (PIAWE). Following this, a claimant is eliglbe for between 80 to 95% PIAWE for up to 260 weeks depending on the work situation.

Beyond 260 weeks, a claimant must demonstrate over 20% Whole Person Impairment (WPI) to receive ongoing weekly payments.

In addition to weekly payments, a claimant can receive reasonable medical and related expenses if over 15% WPI and a lump sum compensation for Whole Person Impairment if at least 10% WPI is established for physical injuries or 15% for psychological injuries.

Modified common law damages may also be available under the Workplace Injury Management & Workers Compensation Act 1998, in which claims can be made for work injury damages for past and future loss of earnings and superannuation.

- SUMMARY OF WORKERS COMPENSATION CLAIMS IN QLD

In Queensland, the Workers' Compensation & Rehabilitation Act 2003 and Workers' Compensation & Rehabilitation Regulation 2014 govern the workers' compensation scheme.

Under these acts, claims can be made for:
- General damages
- Past & future out-of-pocket expenses
- Past & future loss of earnings
- Past & future loss of superannuation entitlements
- Past & future paid care

General damages are assigned based on an Injury Scale Value, in which a number between 0 to 100 is attributed to the claimant's situation. As of 2017, 100 points reflects $355,400.

- SUMMARY OF WORKERS COMPENSATION CLAIMS IN VIC

In Victoria, the Workplace Injury Rehabilitation & Compensation Act 2013 covers all injuries sustained since July 2014, while previous injuries are governed by the Accident Compensation Act 1985.

A no-fault statutory scheme is in place that covers weekly payments, medical & life expenses as well as a potential lump sum payment for impairment. General damages and past & future loss of earnings are covered by common law.

Under the statutory scheme, a claim should be lodged as soon as practical. Weekly payments up to 130 weeks are made for people who have suffered full or partial incapacity, while after 130 weeks a claimant must show:
- permanent incapacity indefinitely
- capacity for at least 15 hours per week, earning at leaast $199 per week and unable to increase hours due to work-related injuries.

Under common law, a 6-year limitation period applies, and a claiment must demonstrate a serious injury that satisfies either of the following criteria:
- 30% Whole Person Impairment (WPI) or more, defined by the Deeming Test
- Permanent serious injury, loss of bodily function, behavioural disorder, disfigurement or loss of foetus under the Narrative Test.

- SUMMARY OF WORKERS COMPENSATION CLAIMS IN ACT

In the Australian Capital Territory, the Workers' Compensation Act 1951 and Civil Law Act 2002 govern the state's workers' compensation damages claims.

Under these acts, common law damages can be claimed for:

- Unfettered common law damages
- Economic loss, including loss of superannuation
- Past & future out-of-pocket expenses
- Past & future gratuitous care

In the ACT, there are no caps or thresholds on damages.

Costs are limited to $10,000 plus disbursements if damaged recovered by settlement or verdict do not exceed $50,000.

There is now an overlap with the common law and NDIS with regard for car and support during paybacks and preclusion periods.

DUST DISEASE, MESOTHELIOMA AND ASBESTOS CLAIMS

In the 1960's, 70's and 80's the world was only just starting to become aware of the dangers of working in dusty environments and however, there was little or no appreciation of the risks and the need for adequate protection within the average workplace. As a result, many employees were exposed to harmful dust products including asbestos, silica, aluminum, bagasse, beryllium, cotton hay and other harmful dust particulars in various workplace environments.

Usually, the effects of exposure do not become apparent until many years later. Fortunately, the government in various states and territories has established iCare Dust Diseases Care or an equivalent, and also Special Courts or Tribunals to address such claims. The time limits to bring an action has been removed.

- ## WHAT IS A DUST DISEASE?

Dust diseases are a group of lung illnesses caused by inhaling certain products when they are in powder or dust form.

The *Workers' Compensation (Dust Diseases) Act* 1942 defines "dust disease" as follows:- "Dust disease means any disease specified in Schedule 1 and includes any pathological condition of the lungs, pleura or peritoneum that is caused by dust that may also cause a disease so specified"

The diseases specified in schedule 1 of the Workers Compensation (Dust Diseases) Act 1942 are:-

- Aluminosis (aluminium dust)
- Asbestosis
- Asbestos induced carcinoma
- Asbestos related pleural disease
- Bagassosis (Sugar cane dust; hypersensitivity to molasses)
- Berylliosis (beryllium dust)
- Byssinosis (Cotton dust)
- Coal Dust pneumoconiosis (Coal Dust)
- Farmers' lung (Spores from rotten hay)
- Hard Metal pneumoconiosis (Cobalt/tungsten + other hard metal dust)
- Mesothelioma
- Silicosis (Sandstone/Granite/Caesar Stone Dust)
- Silico-tuberculosis
- Talcosis (talc dust)
- Pneumoconiosis (inflammation commonly leading to fibrosis of the lungs caused by inhalation of dust)

- WHERE CAN EXPOSURE OCCUR?

Dust diseases are most often contracted in work environments where workers are exposed to or handle products and materials containing harmful dusts such as asbestos. The types of work environments where exposure might occur is as follows:-

- Home building sites
- Commercial construction sites
- Import and waterside precincts
- Boiler making and plumbing industries
- Logistics and trucking industries
- Excavations and tunnel works
- Workshops where Caesar stone is cut.
- Mechanic workshops where car, train, truck or bus brakes and clutches are repaired and replaced.
- Electrical work involving working inside roofs
- Farmwork

Dusts that can cause diseases when inhaled:

- Asbestos
- Crystalline silica
- Hard metals, for example tungsten, cobalt
- Aluminium, beryllium
- Bagasse, cotton and mouldy hay
- Straw or grain.

Workplace dust can be inhaled when:

- Dust is created - usually by cutting, sanding, drilling or grinding
- When it's disturbed, for example during building renovations or during earthworks.

The risk of developing a dust disease is low. The risk of disease may increase with increased exposure to dust. If your employment required you to work in a dusty environment without adequate protection for extended periods of time then the risk of exposure would have been heightened depending on your work activity and work environment including levels of ventilation.

- WHAT ARE THE USUAL SYMPTOMS ?

The symptoms of dust diseases are similar to many other respiratory illnesses. Dust diseases can be diagnosed through medical tests including x-ray or CT scan to the lungs, a lung function test and a medical consultation with a doctor or respiratory specialist. Common symptoms vary depending on the precise condition but commonly include the following:-

- Coughing
- Shortness of breath or abnormal breathing
- Chest pain
- Mucus in the airways (sputum production)

Dust diseases do not generally appear until many years after exposure with latency periods for up to 40 or more years. They can cause benign thickening or scarring of lung tissue. Asbestos dust can also cause lung cancer, pulmonary fibrosis and malignant mesothelioma.

- WHAT SHOULD I DO IF I FEEL I HAVE BEEN EXPOSED? :-

The most important thing to do is seek urgent medical treatment and testing. It is important to obtain a definitive diagnosis as soon as possible. Obtaining a diagnosis will allow your lawyers to act quickly to commence proceedings to preserve your entitlements.

Most client's who contact law firms know that they may have been exposed to potentially harmful dust for a prolonged period, but do not yet have a diagnosis. A law firm cannot commence proceedings based on speculation. It is therefore imperative that the appropriate tests are carried out and you find out what condition you may have.

- APPLICATIONS TO ICARE DUST DISEASES CARE

If you believe you may have been exposed to a harmful dust and you are exhibiting symptoms as described above, you should lodge an application to the dust disease board who will assess your application and refer you to have the relevant testing and arrange for you to see a respiratory specialist. That specialist will diagnose you. If you are diagnosed as having a disease as listed in schedule 1 above, then you can immediately seek legal advice and commence court proceedings.

iCare Dust Diseases Care will categorise your condition into either disabling or non-disabling. If you have a disabling condition you might also qualify to have your medical expenses and your weekly wages paid by iCare on an ongoing basis.

If iCare deems that your condition is a condition that is listed in schedule 1 (see list of conditions above) but is not disabling, you will not be entitled to any ongoing benefits, but you may still be permitted to bring a claim for lump sum damages.

If iCare determines that you have a condition that is not listed in schedule 1 and is not disabling, then you will not have any entitlements to make a claim either for medical and weekly expenses or lump sum damages.

It is important to note however that in some instances, certain conditions which may not be disabling now, may accelerate and become more serious and disabling and therefore compensable in the future. It is therefore imperative that anyone who has been exposed to dust continues to get regular medical tests and check up's particularly if the individual is experiencing deteriorating symptoms.

- HOW DO I LODGE A CLAIM

It is always a good idea to start by lodging an application with iCare Dust Diseases Care who will help you understand what condition you are suffering from and whether they deem it to be disabling or non-disabling. Most firms who are specialised in Dust Disease matters won't mind assisting you complete the application and then submitting it on your behalf.

Once you have a diagnosis, your lawyer will be able to provide you with more precise advice. Generally speaking, if you have a condition which is listed in Schedule 1 then proceedings can be commenced on your behalf in the Dust Diseases Tribunal immediately.

- WHAT IS THE PROCESS OF THE CLAIM AND WHAT DAMAGES ARE YOU ENTITLED TO?

The process is the same regardless of which state you reside in.
Once a claim is litigated, the insurer will seek further particulars of your employment and exposure. They will also have you medically assessed to obtain a diagnosis and assess your needs for future care, life expectancy, future treatment and economic loss where applicable.
A claim for damages will potentially entitle you to the following heads of damage:-

1. General Damages
2. Past Care
3. Future Care
4. Past Wage Loss
5. Future Wage loss.
6. Loss of life expectancy
7. Interest.

In cases where you have been exposed to asbestos may have worked at various premises and where you may have been exposed to dust at more than one location or employer, the Dust Diseases Tribunal will usually appoint a Contributions Assessor. The Contributions Assessor will determine any apportionment of liability that might apply between the relevant employers. Once that occurs, the Tribunal will appoint a Mediator who will contact the parties to arrange a mediation date.

Of course, if your condition deteriorates and then the parties can disburse with the need for mediation and have your matter determined on an urgent basis by the Tribunal.

Settlements can either be on a partial or full and final basis. Partial settlements entitle you to lump sum damages and enable you to retain your Dust Disease Board benefits. If your condition deteriorates in the future, there is also an entitlement to come back and seek damages for the deterioration. Full and final settlements are exactly that, full and final and will extinguish all future rights arising from your condition.

- ## WHO WILL PAY MY LEGAL COSTS

Most legal firms will run your claim on a no win no fee basis. Costs are usually paid at the successful completion of the matter. The insurer will generally pay a good portion of your costs and anything not recovered will come out from the settlement/verdict.

- ## CAN MY FAMILY BRING A CLAIM IF I HAVE PASSED AWAY

ONLY if proceedings are commenced prior to death then those proceedings can be continued by family members. Damages in such circumstances may be reduced slightly as there would be no entitlement to future care.

- ## NEW SOUTH WALES

In NSW, Dust matters are governed by the Workers' Compensation (Dust Diseases) Act 1942. The Dust Diseases Tribunal Act 1989 sets out the rules and regulations that apply to proceedings.

- ## SOUTH AUSTRALIA

In South Australia, Dust matters are governed by the Dust Diseases Act 2005 (SA). The South Australian Employment Tribunal Act 2014 governs the rules and regulations that apply to proceedings.

- ## QUEENSLAND

In Queensland, Dust matters are governed by the Civil Liability (Dust Diseases) and Other Legislation Amendment Act 2005. Generally, if the condition arises from your work, an application for compensation needs to be made to the insurer for statutory benefits. You may have done this already. If not, we can assist.

If you are entitled to pursue a common law claim for damages, a detailed notice of claim needs to be given to the insurer. Strict time limits apply – you need to get expert advice now about the time limits which apply to you.

- ## AUSTRALIAN CAPITAL TERRITORY

In A.C.T Dust matters arising out of employment are governed by the Workers Compensation Act 1951 and are otherwise determined at Common Law.

- ## VICTORIA

In Victoria, Dust matters are governed by the Wrongs Act 1958. There is no tribunal but matters are litigated in the Supreme Court in a specialised Dust list.

- ## SUMMARY

Dust diseases are a debilitating illness. Whilst compensation is not a cure, it can provide some dignity to those that a terminally ill. The legislation concerned with dust disease should be navigated by the most experienced lawyers in order to ensure that your rights or your families rights are preserved and that the best outcome has been achieved.

PRODUCT LIABILITY COMPENSATION

The world we live in today is very different to the one of the past. We have all become customers without even needing to leave our homes. With Internet sales becoming more and more common, the range of products that have become accessible to us have become infinite.

Unlike the traditional retailer customer relationship, at times customers have difficulty even knowing who the retailer, supplier and manufacturer is. Another risk that consumers have had to accept is that they are unable to check the quality of the products that they are purchasing online.

With that said customers are protected under legislation including the Australian Consumer Law as well as the Civil Liability Act.

- ## WHAT IS A PRODUCT LIABILITY CLAIM?

A product liability claim is a claim made on behalf of a person who has been injured as a result of a dangerous or defective product. The appropriate legislation in New South Wales is designed to identify who is responsible for defective or dangerous products as well as identifying a set of rules that allows for appropriate compensation to be awarded in favour of a person who has sustained injuries and disabilities as a result of the negligence of the manufacturer, supplier or retailer.

- ## WHAT LAW APPLYS

The Australian Consumer Law (ACL) applies to a manufacturer that supplies consumer goods in trade or commerce

- ## MANUFACTURER LIABILITY FOR GOODS WITH SAFETY DEFECTS

Who is a manufacturer?

- A manufacturer may be a company that:
- makes or assembles the goods
- imports the goods (if the maker of the goods does not have an office in Australia)
- uses its own brand name in relation to the goods
- promotes itself to the public as the manufacturer of the goods
- permits another person to promote the goods as having been manufactured by the company.

- ## WHAT IS A SAFETY DEFECT?

Like all things in the law, in order to identify what the appropriate test is, the court often looks at what a reasonable expectation would have been. A safety defect generally arises when the level of safety the public is generally entitled to expect has not been met.

While the expected level of safety will vary from case to case, it is ultimately for a court to determine whether a product has a safety defect.

When considering a reasonable expectation of safety please look at:

- how and for what purposes the product has been marketed
- product packaging
- the use of any mark in relation to the product
- instructions and warnings for assembly and use
- what might reasonably be expected to be done with the product
- the time when the product was supplied.

- ## OLD PRODUCTS VS NEW PRODUCTS

the fact that an old product is not as safe as a new product, does not in itself make it defective. When considering whether an old product is defective, consideration will be given to the technology of the time, and what was reasonably expected of the product by members of the public. This does not mean however that manufacturers will not be liable for defects in old products. It simply means that the test is a reasonable test that takes into account a number of relevant factors relating to the time in which the product was manufactured.

- ## STATUTORY DEFENCES TO MANUFACTURER LIABILITY

A number of statutory defences are provided to a manufacturer against a product liability action.

These defences are available when:

- the safety defect did not exist at the time of supply by the manufacturer
- the product was a component of a finished product and the safety defect is only attributable to:
  - the design of the finished goods or the packaging
  - instructions or warnings included in those finished goods—then, the manufacturer of the finished goods is liable and not the component maker
- the safety defect could not have been discovered at the time the manufacturer supplied the goods because there was insufficient scientific or technical knowledge at that time
- the safety defect only existed because a mandatory standard was complied with. In this case, the Commonwealth may have to pay any compensation.

- CONSUMER COMPENSATION CLAIMS

Under the ACL, a consumer can seek compensation from a manufacturer who has supplied a product with safety defects if that product has caused loss or damage.

Loss and damage can include:

- injuries to the person making the claim, or injuries or death to another individual
- economic loss caused by damage to, or destruction of another good, land, a building or a fixture.

Consumers who suffer loss or damage because of safety defects in a manufacturer's goods can:

- take the manufacturer to court
- make a complaint to a consumer protection agency, who may:
  - seek to conciliate the issue
  - consider if there is significant public value in bringing a representative action against the manufacturer in court.

Dependents of a person injured or killed by a safety defect in goods can also claim for the losses they suffer as a result.

If a consumer succeeds in an action against a manufacturer, the court will decide how much compensation is due. Where the actions or omissions of an injured person contribute to the loss, the court can reduce the amount of compensation payable.

In addition to the product liability provisions in the ACL, people who have been injured, or who have otherwise sustained loss or damage, may have common law rights of action.

- CLAIMS NOT COVERED

The ACL does not cover claims relating to:

- damage to commercial property
- loss arising from a business relationship, such as loss of profit
- losses for claims made for workers' compensation; and
- losses regulated by international agreements.

- TIME LIMITS ON PRODUCT LIABILITY ACTION

Consumers have three years to bring an action from the time they become aware (or ought reasonably to have become aware) of the loss, the defect and the identity of the manufacturer.

Any action must also commence within 10 years of the time the manufacturer supplied the goods with safety defects.

OUTLINE OF THE LAW FOR WILL DISPUTES

In Australia, people have the right to prepare a last will and testament and expect that their wishes will be respected. For the most part, the Supreme Court prioritises the wishes of a deceased and often, will do everything possible to minimise any change made to a Will.

It may come as a surprise however that there has been a significant trend in recent years where the Supreme Court and the Court of Appeal have made decisions which have changed the landscape of wills and will dispute claims.

With that in mind, it is necessary to understand that a will dispute claim is not designed to:

1. affect a "fair" disposition of the estate
2. make equal provision for children (or other persons)
3. reward for services per se
4. punish or readdress poor previous (parental) behaviour or the righting of wrongs

It is however **designed to satisfy the moral duty of a deceased person taking into consideration the backdrop of several key factors that are relevant to any claim**. These include but are not limited to:

1. the extent of the relationship between the deceased person and the plaintiff
2. the financial needs of the plaintiff
3. the dependency of the plaintiff on the deceased person at the time of death
4. the competing financial circumstances of other parties
5. any competing claims being made on the estate

There are of course other factors that can influence how a court may alter a will and make an order for provision however the ones referred to above are some of the main considerations.

- ## DO I HAVE A CLAIM?

In order to answer the question of whether you have a claim, you need to first demonstrate that you are:

1. Eligible to make a claim.
2. You are making the claim within time limits.
3. You can demonstrate the need.
4. You can demonstrate that the deceased owed you a moral duty.

We have expanded on each of these issues below for your ease of reference.

- ## FAMILY PROVISION CLAIMS IN OTHER STATES

At Gerard Malouf and Partners (GMP) we represent clients who want to make a family provisions claim in almost all jurisdictions in Australia. For this reason, this guide will cover how the different jurisdictions deal with some of the main issues that are relevant to a family provisions claim.

AM I ELIGIBLE TO MAKE A CLAIM?

The eligibility criteria to make a claim for further provision out of an estate, varies depending on where the deceased lived and died. **Below is a brief explanation as to the groups of people that are eligible to make a claim for provision in the different jurisdictions in Australia**.

- ## AUSTRALIAN CAPITAL TERRITORY

You are eligible to make a claim if you are:

1. A “partner” of the deceased person.
2. A person (other than a partner of the deceased person) who was in a “domestic relationship” with the deceased person for two or more years continuously at the time.
3. A child (which includes an adopted child) of the deceased person.
4. Stepchildren, grandchildren or parents of the deceased person may also be eligible to apply for provision however there are limitations. For the most part, the applicant needs to demonstrate that the person was being maintained immediately before the deceased’s death.

- ## NORTHERN TERRITORY

You are eligible to make a claim if you are:

1. A spouse or de facto partner.
2. A former spouse or de facto partner of the deceased (but only if that person was maintained by the deceased immediately before his or her death).
3. A child which includes an adopted child.
4. A stepchild.
5. A grandchild.
6. A parent.

- ## NEW SOUTH WALES

You are eligible to make a claim if you are:

1. A person who was the wife or husband of the deceased at the time of the deceased’s death.
2. A person with whom the deceased was living in a de facto relationship at the time of the deceased death.
3. A child of the deceased.
4. A former wife or husband of the deceased.
5. A person who:
    a. was at any particular time, wholly or partly dependent on the deceased and,
    b. is a grandchild of the deceased or was, at that particular time or at any other time, a member of the household of which the deceased was a member.
6. A person with whom the deceased was living in a close personal relationship at the time of the deceased death.

- QUEENSLAND

You are eligible to make a claim if you are:

1. A spouse.
2. child or,
3. dependent of the deceased person you will be eligible to make a claim for provision.

- SOUTH AUSTRALIA

You are eligible to make a claim if you are:

1. The spouse of the deceased.
2. A person who has been divorced from the deceased.
3. The domestic partner of the deceased;
4. A child of the deceased;
5. A child of a spouse or domestic partner of the deceased being a child who was maintained wholly or partly or who was legally entitled to be maintained wholly or partly by the deceased immediately before his or her death;
6. A child of the child of the deceased;
7. A parent of the deceased who satisfies the that he or she cared for, or contributed to the maintenance of, the deceased during his or her lifetime;
8. A brother or sister of the deceased who satisfies the court that he or she cared for, or contributed to the maintenance of, the deceased during his or her lifetime;

- TASMANIA

You are eligible to make a claim if you are:

1. The spouse of the deceased;
2. The child of the deceased;
3. The parent of the deceased, if the latter dies without leaving a spouse or any children;
4. A person whose marriage to the deceased has been dissolved or annulled but who at the date of the deceased's death was receiving or entitled to receive maintenance from the deceased whether pursuant to an order of the court, or to an agreement or otherwise;
5. A person who significant relationship with the deceased had ceased before the date of the latter's death but who was receiving or entitled to receive maintenance from the deceased whether pursuant to an order of a court, or to an agreement or otherwise;

THE CORRECT LEGAL TEAM WITH EXTENSIVE KNOWLEDGE ABOUT INHERITANCE DISPUTES CAN MAKE ALL THE DIFFERENCE IN MAXIMISING YOUR COMPENSATION. CHOOSE GMP!

- VICTORIA

You are eligible to make a claim if you are:

1. The spouse or domestic partner of the deceased at the time of the deceased's death.
2. A child including an adopted child of the deceased who at the time of the deceased's death, was under the age of 18 years, a full-time student aged between 18 years and 25 years, or suffered a disability;
3. A stepchild of the deceased who at the time of the deceased death, was under the age of 18 years, a four-time student aged between 18 years and 25 years, or suffered a disability
4. A person who:
    a. for a substantial period during the lifetime of the deceased, believe that the deceased was his or her parent and was treated that way by the deceased and
    b. at the time of the deceased death, was under the age of 18 years, a full-time student aged between 18 years and 25 years, or suffered a disability.
5. A former spouse or former domestic partner of the deceased if the person, at the time of the deceased death:
    a. would have been able to take proceedings under the Family Law Act;
    b. has either not taken those proceedings or commenced but not finalised those proceedings;
    c. is now prevented from taking or finalising those proceedings because of the death of the deceased.
6. A child or stepchild of the deceased not referred to in the second or third dot points;
7. A person, not referred to in the fourth dot point above, who for substantial period during the life of the deceased believe that the deceased was his or her parent and was treated that way by the deceased;
8. A registered caring partner of the deceased;
9. A grandchild of the deceased;
10. A spouse or domestic partner of a child of the deceased if the child of the deceased dies within one year of the deceased's death;
11. A person who, at the time of the deceased's death, is a member of the household of which the deceased was also a member.

- WESTERN AUSTRALIA

You are eligible to make a claim if you are:

1. A person who was married to, or living as the defector partner of, the deceased immediately before the deceased death;
2. A person who, at the date of the deceased's death, was receiving or entitled to receive maintenance from the deceased as a former spouse or de facto partner of the deceased, whether pursuant to an order of the court, or to an agreement or otherwise;
3. A child of the deceased who was alive at, or born within 10 months of, the date of the deceased's death;
4. A grandchild of the deceased who was being maintained wholly or partly by the deceased immediately before the deceased death;
5. A grandchild of the deceased who was alive at, or born within 10 months of, the date of the deceased's death, and one of whose parents was a child of the deceased who had predeceased deceased;
6. A stepchild of the deceased who was being, or entitled to be, maintained wholly or partly by the deceased immediately before the deceased's death;

TIME LIMITS IN MAKING A CLAIM

If you intend to make a claim for provision, you need to take immediate steps so as to ensure you do so within time. The time limits in making a claim very depending on the State in which the deceased lived and died. If you are unsure as to what the time limits are, you should contact GMP as a matter of urgency.

Claims can be made outside of these time limits however in doing so, you need to ensure that a valid explanation is provided to the Court. A claim can proceed if the Court grants an extension of time. **When considering whether an extension of time ought to be granted, the Court will consider some of the following issues. This is not an exhaustive list**:

1. Time since death;
2. Whether or not you were provided with any legal advice;
3. Whether you reasonably knew or should have known of the time limits;
4. Any prejudice to the estate and beneficiaries; and
5. Whether or not the estate has been distributed.

The time limits in making a claim are:

1. Australian Capital Territory – within a period of 6 months after the date when administration in respect of the estate of the deceased person has been granted;
2. Northern Territory - within a period of 12 months after the date on which administration in respect of the estate of the deceased person has been granted;
3. New South Wales – within 12 months from the date of death;
4. Queensland – within 9 months from the date of death;
5. South Australia – within 6 months from the grant of probate;
6. Tasmania – within 3 months from the grant of probate;
7. Victoria – within 6 months from the date of which a Grant of Probate or Letters of Administration has been issued; and
8. Western Australia – within 6 months from the date a Grant of Probate is issued.

- WHAT IS MEANT BY "NEED" AND "MORAL DUTY" IN THE CONTEXT OF AN APPLICATION?

Within the context of a family provision claim, a Court will need to consider the needs of the applicant as well as the moral obligation of the deceased person towards the plaintiff.

Need is a concept which is relative to the financial circumstances of each person. For example, the needs of a person who has millions of dollars in assets is different to the needs of a person her lives in a Department of Housing home with no savings.

What is relevant however, is **the plaintiff's lifestyle prior to and since the deceased's passing as well as the financial resources available to meet their respective needs**.

When taking into account the moral duty of a deceased towards a plaintiff, the Court will be considerate of the extent and duration of the relationship, how dependent the plaintiff was in the deceased and what contributions the plaintiff had made to the acquisition of the deceased's estate, their ongoing maintenance and what support was provided to improve the deceased's quality of life.

The Court will also consider how and what the deceased did for the plaintiff during his or her life. It is relevant to assess what the plaintiff has come to expect from the deceased and whether it is reasonable for a Court to expect that level of ongoing assistance and support.

- PROMISSORY ESTOPPEL CLAIMS

You may have had a promise made to you before the deceased passed away for some benefit. The promise must be specific and have a valuable consideration owed to you. **It is important to specify when the promise was made, exactly what was said and the circumstances surrounding the promise.**

When examining a promissory estoppel claim it is important to consider what detriment you experienced on account of the promise not being fulfilled. In many instances it can be thought of as a contract, a promise was made by the deceased in exchange for some sort of service the beneficiary would be providing to the deceased.

- MENTAL CAPACITY CLAIMS

There are many forms of mental capacity claims however the most common is the deceased making a will during a time when they had dementia. It is important to consider the date the will was made and what conditions the will was made under was there a solicitor present and what health issues was the deceased suffering from at the time?

It is important to understand your relationship with deceased and how of often the you had contact with the deceased around the time the Will was created. **If the deceased was mentally impaired it is important to obtain their medical practitioner details and any documentation regarding their health condition.**

PROCESS OF MAKING A CLAIM

Whilst the documents that need to be filed in each jurisdiction are different, GMP has adopted a streamlined method to process your claim.

It is our intention to commence proceedings as soon as practicable to avoid any unnecessary delays and to ensure a quick result with minimal costs.

In summary, the general steps to processing a claim for further provision are set out below:

1. Engage a lawyer.
2. You will be requested to provide documents in support of your claim including but not limited to:
    a. financial records i.e. tax returns, pay slips, bank statements, superannuation statements etc
    b. documents supporting the relationship i.e. photographs, letters and general communications
    c. documents showing your weekly expenses
    d. documents showing your weekly income
    e. in the event that you are in a de-facto relationship or a marriage, the financial circumstances of your partner will become relevant and will also need to be produced.
3. Immediately, your solicitor will write to the executor of the estate and their solicitors, putting them on notice of your intention to commence proceedings seeking further provision out of the estate. 1-4 weeks
4. Requesting particulars from the estate 1-4 weeks
5. Preparing your draft affidavit to review. This is attended to once a response from the estate is received confirming the size of the estate. 3-6 months
6. commencing formal proceedings in the Supreme Court or the appropriate court in your jurisdiction 6 months
7. The matter will be listed for a directions hearing in Court 7 months
8. The defendant will serve affidavit evidence detailing the size of the estate as well as the anticipated costs 8 months
9. Mediation will be scheduled to take place. The matter may settle at the mediation or could proceed beyond a mediation if no settlement is achieved 9 months
10. In the event that the matter has not resolved each party will put on further evidence (by way of further Affidavits) in support of their claim 10 to 12 months
11. Apply to have the matter listed for a hearing 12 months
12. Hearing will take place followed by judgement.

The process can vary slightly in different jurisdictions, however as a general rule, this is how one can expect a family provision claim to progress. Various obstacles can delay the claimant from progressing and at times estates may be inclined to want to participate in early settlement discussions to resolve a claim sooner rather than later.

Engaging the correct law firm, with litigation experience is of paramount importance. Often law firms fail to adequately assess the prospects of success in a claim and will refuse to take the case on.

At GMP we have extensive litigation experience in family provision matters and will be able to assist you and obtain the results that you deserve.

TAKE JUSTICE INTO YOUR OWN HANDS AND CHOOSE GMP LAW TO REPRESENT YOU.

SEXUAL ASSAULT INCLUDING CHILD ABUSE COMPENSATION

- UNDERSTANDING SEXUAL ASSAULT LEGALLY

It is important to acknowledge that sexual assault can happen to anyone, most people find it hard to talk about but it is well within your rights to seek legal support and justice when you have been violated. **It is never a victims fault that they were sexually assaulted regardless of the circumstances.**

Sexual assault is legal terminology that describes a range of sexual offences. These sexual offences range from; showing obscene images to a person, to touching someone inappropriately and also penetration of a person's body. If someone acted in a sexual way that made you feel violated or if someone touched you without consent this may be classified as sexual assault.

It is important to consider seeking help from health services, sexual assault counselling services and legal services if you believe you may have experienced sexual assault. **Seek out help regardless of whether you have contacted police or not- even if the police don't believe a crime has been committed.**

IMPORTANT LEGAL ELEMENTS CONCERNING SEXUAL ASSAULT

Some elements that must be considered when determining sexual assault are:

- Issues around consent.
- The victims age.
- Where and how the assault took place?
- What was the perpetrators thought process?
- What was the victims thought process?
- What would a reasonable person have thought in the circumstances?

There are no statutory time limits relating to sexual assault therefore you are able to bring a claim long after the assault has occurred. Establishing liability of the perpetrator is "unofficially" a lower standard of proof so it is definitely worth enquiring with legal counsel to determine if your case is viable.

Sexual assault matters mostly settle before going to court therefore your case remains private and has fewer people involved in the process. Lawyers have a duty to keep all information confidential about their clients. **During the legal process you will not be required to meet with the perpetrator, the whole process in non-confrontational and your wellbeing is always considered.**

IMPORTANT ELEMENTS TO CONSIDER FOR YOUR SEXUAL ASSAULT CLAIM

- What were the dates or period of the abuse?
- Was the sexual abuse a one off assault or repeated?
- What was your age at the time of abuse?
- Which state did the sexual abuse occur?
- What is the offenders name? What was the offenders position or title?
- Did the the abuse take place at an institution e.g. school, church etc?
- What assets does the offender have? What are their approximate value?
- If the offender is an individual, was any government authority e.g. FACS, DOCS, a school etc involved with your care at the time? Or were they on notice about the potential abuse?
- Was the abuse reported to the police, royal commission or other authorities? If so, what was the outcome?
- Have you made any other claims for the abuse e.g. VCT, prior settlements?

GERARD MALOUF AND PARTNERS
solicitors & barristers

- IT IS IN YOUR BEST INTEREST TO SEEK LEGAL HELP

The trauma of sexual assault causes significant emotional, psychological and physical problems for victims, this can detrimentally affect a victims life, livelihood, relationships, physical and mental health. Sexual assault matters often settle for large sums of money due to the extensive damage it causes victims.

At Gerard Malouf And Partners we obtain the most compensation possible for our clients as we claim under all of the heads of damages (areas of loss). GMP is able to provide you with up to triple the amount of compensation compared to the Victim Support Scheme NSW under their 'recognition payments' for a sexual assault matter.

The finalisation of a victims legal claim often contributes to emotional closure. The course of justice is served and a psychological end occurs, this supports the healing process for many victims of sexual assault.

- CHOOSE GERARD MALOUF AND PARTNERS TO REPRESENT YOUR CASE

Gerard Malouf and Partners will provide you with the highest quality legal service:

- We respect the highly private nature of your abuse case.
- It's highly unlikely you'll ever be required to provide formal evidence in front of a judge or have the facts of the matter become public.
- You will not need to see or meet the perpetrator.
- We have a team of medical and financial experts to explore all of your losses and make a significant claim for damages for the past and ongoing loss and damages you've sustained.
- We are accredited specialist in personal Injury.
- The firm has an excellent track record and reputation.
- Senior lawyers with experience will take on your case.
- We provide excellent Client Care service.
- GMP is a specialised personal injury firm with decades of experience winning cases.
- Our expert lawyers will build a strong case for you by investigating the facts thoroughly and obtaining expert evidence to support your case.
- GMP will provide you with an excellent and fair "no win no fee" arrangement and keep you fully informed regarding the merits of your case.
- You will obtain a maximised financial result utilising the expertise of our lawyers who claim all the relevant areas of damage.
- You will be provided with all the information you require relating to costs and compensation during your claim and at its conclusion.

Gerard Malouf and Partners is Australia's leading compensation firm. We have won over 35,000 compensation claims and close to 4 billion dollars for our clients over the past +35 years, all while under the same management. We have a 98% success rate for our cases that have gone to court.

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