



A GUIDE FOR PEOPLE INJURED IN A MOTOR VEHICLE CRASH



Insurance Commission
of Western Australia

CONTENTS

INTRODUCTION	3
MOTOR INJURY INSURANCE	3
REPORTING OF A CRASH	4
WHO CAN MAKE A CLAIM?	4
WHAT IS A CATASTROPHIC INJURY?	5
HOW DO WE ESTABLISH FAULT?	5
WHAT IF I AM PARTLY AT FAULT?	5
HOW DO I MAKE A CLAIM?	6
WHAT CAN I CLAIM?	7
DEPENDENCY CLAIMS	9
IS THERE A TIME LIMIT TO CLAIM?	9
MANAGEMENT PROCESS	10
HOW IS MY CLAIM FINALISED?	12
LEGAL REPRESENTATION	13
CAN'T AGREE ON SETTLEMENT?	14
FEEDBACK	14
OUR CONTACT DETAILS	16



INTRODUCTION

Being injured in a motor vehicle crash is a traumatic experience. This guide explains the steps to make a motor injury insurance claim to help you and your family/friends through this difficult time.

MOTOR INJURY INSURANCE

The Insurance Commission of Western Australia (Insurance Commission) provides motor injury insurance cover for over 1.8 million Western Australian drivers and 2.8 million registered vehicles.

Motor injury insurance is compulsory and applies to all vehicles at registration. It covers:

A) The cost of personal injury and death caused to others in Australia by any driver of the registered vehicle, which includes compensation for:

- pain and suffering;
- past and future economic loss;
- claims management expenses; and
- treatment, care and support (including medical treatment and rehabilitation).

Over the past 70 years, we have assisted more than 100,000 injured motorists, passengers, pedestrians and cyclists.

See our website for further information on how we can help: icwa.wa.gov.au

B) The cost of necessary and reasonable treatment, care and support (including medical treatment and rehabilitation) for catastrophic injuries incurred BY:

THE DRIVER - if no other driver in the crash is negligent; and

OTHERS - if no driver in the crash is negligent

resulting from a motor vehicle crash in Western Australia involving the registered vehicle after 1 July 2016.

The Motor Vehicle (Third Party Insurance) Act 1943 and the ***Motor Vehicle (Catastrophic Injuries) Act 2016*** set out the legislative arrangements for motor injury insurance.



REPORTING OF A CRASH

If you are involved in a crash, you must report it soon after the crash by using the **Online Crash Reporting Facility** (crashreport.com.au) which will notify us and Western Australia Police.

You will be asked to provide the following information:

- date, time and location of the crash;
- licence plate numbers of the vehicles involved;
- names and addresses of all parties involved; and
- names and addresses of any witnesses.

If you do not report the crash, you may be breaking the law.

WHO CAN MAKE A CLAIM?

You may be able to claim if you were:

1. injured in a motor vehicle crash; or
2. financially dependent on the person fatally injured in a motor vehicle crash.

Unless you were catastrophically injured in the motor vehicle crash, in order to make a claim you must be able to establish that the driver or owner of a motor vehicle was at fault, whether completely or in part.

You may still be able to claim if the vehicle at fault is unidentified or unregistered, such as in a 'hit and run' situation.

If the vehicle at fault was registered in another state or territory, you will need to contact the relevant motor injury insurer in that State to make a claim.

If you were catastrophically injured in a motor vehicle crash in Western Australia after 1 July 2016 you can claim for treatment, care and support, even if you were at fault or are unable to find another party at fault in the crash.

WHAT IS A CATASTROPHIC INJURY?

Catastrophic injuries include spinal cord injuries, traumatic brain injuries, multiple amputations, severe burns and permanent traumatic blindness.

If you receive a catastrophic injury, the Insurance Commission is likely to be notified of your injuries by the treating hospital soon after your hospital admission. You can also notify the Insurance Commission of your injuries at icwa.wa.gov.au

HOW DO WE ESTABLISH FAULT?

Unless you were catastrophically injured in the motor vehicle crash, fault must be established for a claim to be accepted.

The drivers involved must complete a crash report form (crashreport.com.au), and witnesses may be contacted.

People involved in the crash may have to give a formal statement.

The police may provide us with information to assist our investigation. We may also seek legal advice to guide our decision.

WHAT IF I AM PARTLY AT FAULT?

You can still claim if you were partly at fault for the crash, or partly responsible for your injuries, but your compensation may be reduced if you were:

- not wearing a seatbelt;
- driving under the influence of alcohol or drugs;
- travelling in a vehicle when you know, or should know, the driver is under the influence of alcohol or drugs;
- driving at an unsafe speed or not keeping a proper lookout; or
- not wearing a helmet if you were riding a motorcycle or bicycle.

If you were partly at fault and catastrophically injured in a crash in Western Australia, your claim for treatment, care and support will not be reduced.



HOW DO I MAKE A CLAIM?

If you are injured in a crash, are able to establish another driver was at fault, and wish to make a claim, please call the Insurance Commission on +61 8 9264 3333.

You may be provided with a Notice of Intention to Make Claim Form and a Medical Authority for your completion, if you can identify another driver at fault in the crash and are making a Compulsory Third Party insurance claim.

Alternatively, you may be provided with an Application Form for the Catastrophic Injuries Support scheme if you are catastrophically injured in the crash, and you are unable to establish the fault of another driver.

If you only require minimal medical treatment, a Claim Form may not be required. Any forms required to be completed should be returned as soon as possible.

Make sure you have also reported the crash using the **online crash reporting form ([crashreport.com.au](https://www.crashreport.com.au))**.

Once we receive this information, we will provide you with a claim reference number and your claim will have been lodged.

All catastrophic injuries can also be notified on our website irrespective of whether fault can be established against another driver involved in the crash.

WHAT CAN I CLAIM?



Ambulance transport

We pay for emergency transport from the crash scene to the hospital for all motor vehicle crashes regardless of fault.



Dental services

We can pay for your teeth to be restored if they were damaged in the crash.



Hospital services

We pay for emergency treatment at a public or private hospital.



Medical aids

We can pay for the repair or replacement of certain aids damaged in your crash like glasses, hearing aids, mobility aids or dentures.



Nursing services

We can pay if you need home visits after you are discharged from hospital.



Rehabilitation services

We can pay for the rehabilitation services that are required, such as working with a physiotherapist on a return to work program.



Medical services

We can pay for visits to your family doctor and specialist, and pathology tests.



X-rays

We can pay for medical imaging required to diagnose your injuries, such as x-ray, CT/CAT scans, MRI and ultrasound.



Therapy services

We can pay for required therapy services such as physiotherapy, massage, chiropractic, podiatry, optometry, osteopathy and psychology.



Medication

We can pay for medicine prescribed by your doctor and provided by a pharmacist.



Domestic assistance

We can pay for services like housekeeping and gardening, while you recover from your injuries.



Equipment

We can pay for equipment hire or purchase that your health professional recommends such as crutches.



Travel

We can pay for the cost of travelling to and from medical and other appointments that you have to attend for your crash injuries.

WHAT CAN I CLAIM? (cont.)



Home and transport modifications

We can pay for modifications that may be required as a result of your injury to your home such as hand rails, and, vehicle such as modified hand controls.



Prostheses

We can pay for prostheses that are required as a result of your injuries such as a prosthetic leg.

If you are catastrophically injured in a crash, you can claim treatment, care and support, irrespective if another driver was at fault in the crash. If you are not catastrophically injured and were at fault or unable to identify fault of another driver in the crash, you may not be entitled to claim.

Economic loss and pain and suffering can only be claimed if you are able to identify another driver at fault in the crash.



Economic loss

We can pay compensation for your loss of capacity to earn for the period you are unable to work due to your injuries from the crash. We can also make interim payments to avoid unnecessary hardship on you and your family.

Claims for economic loss are restricted to a maximum of three times the full-time adult average weekly earnings in Western Australia.

We will ask you for information to support your economic loss claim.



Pain and suffering

Compensation for non-pecuniary loss has to exceed a minimum threshold and is capped with a maximum amount payable.

The minimum threshold (deductible) is deducted from assessments and gradually reduces as the assessment increases. Once a certain threshold is reached the deductible no longer applies. A Threshold Schedule is used to assess the amount payable.

The figures for the caps and thresholds are adjusted for inflation each financial year, with effect from 1 July.



DEPENDENCY CLAIMS

If you are the close relative of a person who was fatally injured in a motor vehicle crash, and were financially dependent on that person, you may be able to claim compensation.

You may also be entitled to claim the reasonable cost of funeral expenses.

IS THERE A TIME LIMIT TO CLAIM?

Time limits do apply, depending on your age and situation.

- If you have not lodged your claim within three years from the date you first became aware of your injury, (generally this is the date of the crash) you may be legally barred from pursuing a claim.
- If you have not settled your claim within three years from when you first became aware of your injury you must ensure that Court proceedings are commenced to preserve your claim.
- If you are under 18 years of age at the time you first became aware of your injuries, different limitation periods will apply depending on your age.
- If you were catastrophically injured in a motor vehicle crash after 1 July 2016 and you are unable to establish fault of another driver, an Application Form must be submitted within three years of the crash to access lifetime treatment, care and support.
- Dependency claims must be lodged within three years of the date of fatal injury.

MANAGEMENT PROCESS

Liability

On completion of our investigations we will write to you advising whether liability for your claim will be accepted. If liability is not accepted or only partly accepted, we will explain our decision.

If liability is not accepted, you may still be eligible to receive treatment, care and support if you have been catastrophically injured.

We can proceed with a claim on a without prejudice and without admission of liability basis, which indicates that no final decision has been made on your claim but we continue to progress with it. Once further investigations are complete, we can then revisit liability. Without prejudice signifies that none of the rights or privileges of the individual or of the Insurance Commission are lost or waived by the decision to proceed with the claim.

Any payments made up to that date will not be affected and no request for repayment will be made even if we do not offer to pay 100% of your claim.

Medical treatment following your crash

If you have been injured in a crash you should seek medical attention immediately. You should continue seeking medical attention for long-term symptoms so we can obtain medical reports on your treatment and

rehabilitation progress and consider ongoing payment of your accounts. Contact us to make sure we will pay these costs before your treatment starts.

You have a legal obligation to take all reasonable steps to recover from your injury. This includes:

- having recommended medical treatment;
- taking part in recommended rehabilitation treatment; and
- returning to work or trying to find work.

Generally, we will not continue to pay for medical treatment on an ongoing basis, unless it is providing some sustained improvement in your medical condition.

Who pays for my treatment?

Generally, you are legally liable for the payment of all accounts. However, the Insurance Commission is prepared to consider payment when:

- liability has been accepted or agreed; or
- your injuries are assessed as catastrophic; and
- treatment is necessary and reasonable; and
- your injuries are directly related to your motor vehicle crash.

In most cases, we will pay necessary and reasonable expenses in line with accepted state and national rates.

Please check with your treating provider as there may be a gap payable by you between the recommended provider rates for the required treatment. We may also consider, on request, reimbursement of accounts paid by you. Original accounts and/or receipts should be sent directly to the Insurance Commission. Most services provided by public hospitals in WA are covered by an agreement between the Insurance Commission and the hospitals. You will generally not be billed for public hospital care if it relates to injuries you have sustained in a motor vehicle crash.

If liability for your claim is denied, you are responsible for your expenses. You may be able to claim part, or all, of your expenses from Medicare or your private health insurer.

Can I request an advance payment against my loss of earning capacity?

If another driver is found to be at fault, you may be able to claim for loss of earnings. Although we have no legal liability to pay for loss of earning capacity prior to settlement of the claim, advance payments against your claim for loss of earnings can be considered upon request to minimise financial hardship to you and your family.

Can the Insurance Commission refer me to a medical practitioner of my choice?

Yes, we may arrange for you to be seen by an independent medical practitioner. This is generally to assess the progress of your injury and your treatment requirements.

If you do not attend without good reason, your claim may not be progressed.

When will my claim be finalised?

Your claim will be finalised once we receive a medical report confirming you have recovered from your injuries or your symptoms have stabilised. Some people may recover within weeks or months while others, with very serious injuries requiring extensive treatment, may take years before the claim can be finalised. People with catastrophic injuries and unable to establish fault against a third party in the crash, may receive treatment, care and support for their lifetime, so their claim will remain open.

What if I am catastrophically injured?

If you were catastrophically injured in a motor vehicle crash the Insurance Commission will provide the necessary and reasonable treatment, care and support that you require irrespective of whether fault can be established against another driver.

A Care Services Coordinator will work directly with you to help coordinate the treatment, care and support in consultation with your family/support team and treating medical team.

Care Services Coordinators help prepare the Client Plans, engage treatment, care and support providers and are the main contact for people and their families to access information about the treatment, care and support available to them.

HOW IS MY CLAIM FINALISED?

Once settlement of your claim has been agreed and the settlement documents have been completed, we will process settlement of your claim.

If you have received any benefits from Centrelink, or claimed any medical expenses through Medicare or your Private Health Insurer, we may have to reimburse those expenses, directly from your settlement, before we can release any settlement funds to you.

Where our assessment of compensation for pain and suffering does not exceed the minimum threshold we will advise you in writing. We will let you know any of the treatment costs we have paid on your behalf and reimburse any proven claim for loss of earning capacity.

Your claim will not be finalised if our assessment does not exceed the threshold or there is no entitlement to an allowance for future medical costs. It will remain on our system, but will be inactive.

If you suffer a relapse of your injuries and wish to seek further medical treatment you can, but we will need to establish the treatment is still the result of the injuries you sustained in your crash.

If you do not agree with our assessment or offer and wish to pursue your claim further, you should contact us. You may have to issue Court proceedings to preserve your claim if it has not settled within three years of the date you first became aware of your injuries.





LEGAL REPRESENTATION

It is not necessary to engage a lawyer to make or manage your claim.

You do have the right to appoint a lawyer to assist you with your claim at any stage.

You may be responsible to pay some or all of your legal costs.

Less than one percent of claims to the Insurance Commission are settled in court. We encourage claimants and their lawyers (if using one) to use settlement conferences to reach finalisation of a claim to minimise legal fees and avoid commencing court proceedings.

Courts are costly and should be used as a last resort. Before you start working with your lawyer you should discuss how you will be charged and what the costs are likely to be.

All legal fees are governed by the Supreme Court Scale. Your lawyer is not entitled to enter into any agreement with you to receive more for their services than the Supreme Court Scale of Costs allows.

Your legal costs may include not only your lawyer's fee but other expenses such as Court filing fees and the cost of medical reports.

If you are not successful with your claim, or, if the Court awards you less than the final offer we made to you, a Court may order that you pay our legal fees.

If you were catastrophically injured in the motor vehicle crash and unable to establish fault against another driver there is no need seek legal representation to receive required treatment, care and support services. Care Services Coordinators at the Insurance Commission will work directly with you to ensure necessary and reasonable treatment, care and support services are provided.

CAN'T AGREE ON SETTLEMENT?

You may not agree with our decision on whose fault the crash was or whether certain treatment, care and support expenses are necessary and reasonable.

We will first try to resolve any dispute directly with you, or your lawyer. If legal proceedings are commenced, the Court requires that the parties hold a formal settlement conference to discuss, and hopefully resolve, your claim. If the parties are still unable to reach an agreement, your claim will go to trial and the matter will be decided by a judge.

The dispute resolution process may be different if you are catastrophically injured and making a Catastrophic Injuries Support claim.

FEEDBACK

We are committed to providing you with a high standard of service. Our Customer Commitment sets out our customer service principles, your obligations and how to provide feedback.

The Customer Commitment is available at [icwa.wa.gov.au](https://www.icwa.wa.gov.au)



OUR CONTACT DETAILS

If you need to contact the Insurance Commission, your questions will be answered quickly if you:

- Telephone the direct number printed on the top of our letters.
- Quote important information such as your full name, your claim or reference number, or the crash date.

Insurance Commission of Western Australia

Level 13, Forrest Centre,
221 St Georges Terrace
Perth WA 6000

GPO Box U1908
Perth WA 6845

Telephone: +61 8 9264 3333
Freecall: 1800 643 338 (Outside Perth)

Email: ctpenq@icwa.wa.gov.au

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On request, this guide can be made available in alternative formats.



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