



Engaging a lawyer – motor vehicle injury insurance claims

This factsheet may be useful if you decide to engage a lawyer for your motor vehicle injury insurance claim. It provides information about your rights and proposes some questions to ask.

A. Make a Claim

You can lodge your claim and deal directly with us if you wish. If your claim is complex or disputed, it may be in your best interests to seek advice from a lawyer. You may choose to seek legal advice at any stage of the claims process. If your claim involves a child or person with a disability, there are some circumstances where a lawyer must be engaged, such as where court approval of a settlement is required.

If your injuries are not covered under the motor vehicle injury insurance policy, you may wish to engage a lawyer to advise you on whether there are other avenues available to you to seek care and/or compensation for your injuries. For example, you may be able to make a claim under workers' compensation, a public liability claim against a third party, or a claim under a total and permanent disability insurance or personal accident insurance policy via your superannuation fund or employer.

B. The process of engaging a lawyer

1. Initial Consultation

Prior to your first consultation with your lawyer you should ask them whether they will charge for that initial consultation, and what the fee will be. This consultation may be by phone or in person.

2. Engagement Letter

If you decide to engage the lawyer they will send you an engagement letter outlining the services they will provide and how they will charge you. The lawyer is required provide certain costs disclosures to you, including your right to:

- negotiate a costs agreement;
- receive a bill;
- request an itemised bill; and
- receive an estimate of the total legal costs, or if that's not practicable, an estimated range of total costs with an explanation of the factors that may influence the calculation of the costs.

If the estimated bill (excluding disbursements and GST) is not likely to exceed \$1,500, those disclosures may not be made.

C. Legal Costs

1. Hourly rates/fixed fee

Lawyers have different ways of charging for their services. Some lawyers will:

- charge an hourly rate based on the time they spend on a matter;
- charge a fixed fee for certain services; and
- cap their fees at an agreed amount.

2. Disbursements

In addition to legal costs, lawyers will also charge disbursements, which cover such things as barrister's fees, court filing fees, fees for reports by doctors or others, and photocopying.

3. Solicitor/client costs and party/party costs

(a) Party/party costs are costs which the court orders a party to pay, or which another party has agreed to pay, as part of the terms of a court settlement.

If you enter into a settlement with the Insurance Commission, in most cases we will pay your reasonable party/party costs.



(b) Solicitor/client costs are the costs which a solicitor charges the client for legal services. Party/party costs normally provide only partial reimbursement of a claimant's total legal costs.

While the Insurance Commission may agree to pay some or all of your party/party costs, some solicitors may still ask you to cover the gap between those costs and solicitor/client costs.

4. Payment of costs from settlement proceeds/cost caps

When your solicitor receives any judgment or settlement money from the Insurance Commission, it must be paid into the solicitor's trust account and held on your behalf.

Seven days after sending you a bill, if you have given proper authorisation (either in the costs agreement or otherwise), the solicitor can deduct the sum charged in that bill from those monies to cover their costs. The bill may include an amount representing any gap between party/party costs and solicitor/client costs.

If your claim is for damages in relation to death or personal injury directly caused by, or by the driving of, a motor vehicle, then a lawyer is not entitled to charge you an amount which exceeds the [relevant scale](#) set by the Legal Costs Committee.

5. Can I request an itemised bill of costs?

Yes. If you received a summary bill you have a right to request an itemised bill detailing the costs charged for each item of work. Your lawyer cannot charge you for preparing an itemised bill.

It is recommended that any request for an itemised bill be made to the law practice within 30 days after you receive the summary bill. Your lawyer is entitled to take action against you for unpaid legal fees after 30 days have elapsed since you were given the summary bill. If you request an itemised bill, the 30-day period only begins from the date you are provided with the itemised bill.

6. What if I do not agree with the costs that I've been charged?

At the time of sending you a bill, your lawyer is required to notify you in writing of your rights to dispute the bill. You have a right to:

- iv. apply to have the costs assessed;
- v. have the costs agreement set aside in certain circumstances; and
- vi. lodge a complaint in relation to the lawyer.

Your lawyer must inform you of the time limits that apply to these options.

If you disagree with the costs charged, we suggest you attempt to resolve the matter with the lawyer directly before proceeding with one of the processes outlined above.

The Law Society of Western Australia has [fact sheets](#) with further information about your rights in relation to legal costs.

D. No-win, no-fee arrangements

In a no win - no fee agreement, your lawyer agrees that you will only need to pay **their legal costs** if you 'win' your case.

1. What other costs may be payable in a no-win, no-fee arrangement?

In some no-win, no-fee agreements there are other types of costs and fees which you may have to pay regardless of whether or not you 'win' your case. We recommend you clarify this with your lawyer before making any arrangements. Costs which you may still have to pay are:

- disbursements - include items such as medical report fees, barrister's fees, court fees and photocopying.
- the other side's legal costs - you may in some circumstances be required to pay the Insurance Commission's legal costs if your claim is unsuccessful.

The fees charged in a no-win, no-fee agreement can also be up to 25% higher than the lawyer's regular charge-out rates. This is because the lawyer is taking a risk that they may not be paid for their services if the claim is unsuccessful.

Lawyers are prohibited from charging contingency fees, which is an arrangement whereby the lawyer charges fees based on a percentage of any settlement or damages awarded to you.



2. Definition of a 'win'

No-win, no-fee arrangements must clearly set out the circumstances that form a 'win' in your matter. You should discuss this with your lawyer and carefully review the definition of a 'win' in your costs agreement. A win can mean more than just winning a case at trial. A win can also mean:

- an out-of-court or pre-litigation settlement where you receive compensation from the Insurance Commission, even if the compensation is substantially less than what you expected;
- a court decision awarding you compensation, even if it was substantially less than you expected to receive; and
- rejecting a settlement offer from the Insurance Commission that your lawyer recommends you accept, regardless of whether:
 - you believe the settlement amount offered is reasonable; or
 - your lawyer advised you at some stage during the matter that you may receive a higher amount.

In some circumstances, your lawyer may also be entitled to charge their legal fees if you drop the claim or change lawyers before the matter is concluded.

E. Further information

The Law Society of Western Australia also publishes [helpful information and fact sheets](#) to assist you.