

# Injured on the road?

*To drive on the roads of NSW you must be a licensed driver and be driving a registered motor vehicle. Annual registration of a motor vehicle requires that you have a 'green slip', which is compulsory third party personal injury insurance. This is a way for the community to spread the cost of claims for damages by persons who suffer injuries in motor vehicle accidents.*

*Behind the compulsory insurance scheme is the common law principle that persons have a 'duty of care' towards others, and an obligation to compensate where a breach of that duty is proved, for example, negligent driving resulting in an accident. In many cases, including injuries resulting from motor vehicle accidents, common law rights have been codified into legislation such as the Motor Accidents Compensation Act 1999.*

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## **What should I do if I have been injured in a motor vehicle accident caused by another driver?**

- Ensure that the accident is reported to the police as soon as possible. If you fail to report the accident to the police within 24 hours you may have to satisfy a court that sufficient cause existed to justify the delay.
- Find out the name and phone number of the green-slip insurer of the car which caused the accident by phoning the RTA on 13 22 13 and quoting the registration number of the car at fault.
- Obtain and complete a personal injury claim form from the green-slip insurer and send it to them as soon as possible and no later than six months from the date of the accident.

If your injuries are serious, or you do not know who was at fault or you cannot identify the car to blame (for example in a hit-and-run), you should see a Solicitor as soon as possible. If the accident happened after 4 October 1999, it is possible to obtain up to \$500 for immediate treatment expenses. Ask your doctor to complete an Accident Notification Form and send it into the green-slip insurer.

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## **What if I am partly or wholly to blame for the accident?**

Even if you are partly to blame you are still able to claim damages, but they will be reduced by the percentage assessed as being your share of responsibility for the accident. Your damages may also be reduced if you failed to take sufficient care while travelling as a passenger.

If you are wholly to blame for the accident, you won't receive damages. However, if others were injured, their claims will be met by the green-slip insurer of your vehicle. You should notify your green-slip insurer immediately if you think there could be a claim against you as a result of the accident. You must co-operate with your green-slip insurer and you must not admit fault or offer to make any payments to injured parties.

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## **What must I tell my Solicitor?**

You should give your Solicitor as much information as possible including:

- The precise date, time and location of the accident.
- The names and addresses of people involved in the accident and any witnesses.
- The make, registration number and name of the driver of each vehicle involved.
- The police station to which the accident was reported and the name of the police officer.
- Details of any police action you know of against any persons involved in the accident.
- The name of the hospital to which you were admitted; the time you spent in hospital; the names and addresses of doctors who treated you; and a description of the injuries received in the accident and any resulting disabilities you are suffering.
- The amount of wages you have lost or you could lose as a result of the accident and the name, address and telephone number of your employer.
- Details of any other accidents in which you have been involved.
- Copies of hospital, ambulance, doctor, chemist and other medical bills.
- Your driver's licence and Medicare numbers.
- Details of any workers compensation, social security or other payments, which you have been receiving as a result of the accident.

Your Solicitor needs this information to assist you in completing the personal injury claim form. Unless the claim form is properly completed, the insurance company is not obliged to consider your claim and this will result in delays.

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## **Do I have to go to court?**

No you don't. The motor accidents laws require insurers to try to resolve claims, by settlement or otherwise, as quickly as possible.

Once the insurer has admitted liability (either wholly or in part if you were partly to blame for the accident), it must pay your hospital, medical, pharmaceutical and rehabilitation expenses.

If your injuries are serious, the insurer is required to provide rehabilitation services and to pay for respite care. If the accident happened after 4 October 1999, the insurer is also required to pay for regular care, if this is needed.

Your Solicitor will attempt to settle your claim with the green-slip insurer. However, if settlement is not achieved, court proceedings will be started. It is still possible to settle your claim even after court proceedings are started.

If the accident happened after 4 October 1999 there is a completely new claims assessment procedure. Most cases should either be settled by agreement or be assessed by a specially appointed claims assessor. Cases will only be allowed to go to court if a 'Certificate of Assessment' or exemption has first been obtained.

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## **"Settling out of court" what does it mean?**

If you and the green-slip insurer of the driver at fault agree on the amount of compensation you are to receive, your claim will not go to court. If the insurer makes an offer to you to settle the case, consult your Solicitor who will advise whether the offer is fair.

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## **What compensation am I be entitled to?**

The amount that you will receive will depend upon the seriousness of your injuries and the loss you have suffered as a result of those injuries. Compensation may include:

- If the accident occurred after 4 October 1999 you will receive compensation for pain and suffering only if it is agreed or assessed that your injuries amount to permanent impairment of greater than 10 per cent of your whole body;
- Medical and similar expenses;
- Loss of earnings or loss of opportunity to earn;
- In very serious cases, care, equipment, transport and home modifications.

Compensation will be paid as a once only lump sum, although the green-slip insurer may have to pay your medical and rehabilitation expenses as incurred before your claim is settled. Compensation covers the past loss and the future anticipated loss.

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## How can a Solicitor help me?

Your Solicitor can:

- Advise on whether you should make a claim for compensation;
- Advise you on the strict time limits which apply;
- Advise whether you will be able to prove fault;
- Collect the information necessary to make a claim and help you complete and send the claim form;
- Negotiate on your behalf with the insurer;
- Advise you regarding offers of settlement;
- Commence court proceedings on your behalf;
- Arrange for witnesses, including expert witnesses such as doctors, to give evidence for you;
- Advise you on the medical and claims assessment procedures.

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*These brief notes are for your general information. They are not a definitive analysis of the subject and professional legal advice should be taken before any course of action is pursued. Your Solicitors at Barry F. Cosier & Associates can advise you further regarding any matters of this nature.*



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