

State of the Nation

A guide to different procedural rules, limitation periods, assessment of damages and recent cases for personal injury claims in each Australian state

“Each different regime brings characteristics which are unique to each state and important in the context of driving a strategy for each claim.”

State of the Nation

A guide to personal injury claims in Australia

Assessments of damages in personal injury claims and the apportionment of damages in property damage/ economic loss claims in Australia are governed by different state legislation and regimes.

Whether it's the *Civil Law (Wrongs) Act 2002* (ACT) in the Australian Capital Territory, *Civil Liability Act 2002* (amongst others) in New South Wales, the *Wrongs Act 1958* in Victoria, the *Personal Injuries Proceedings Act 2002 (Qld)* (PIPA) in Queensland, or the *Civil Liability Act 2002 (WA)* and the *Workers Compensation & Injury Management Act 1981* in Western Australia, each different regime brings characteristics which are unique to each state and important in the context of driving a strategy for each claim.

This guide provides a detailed comparison of key damages and proportionate liability criteria, including applicable legislation and procedural rules, limitation periods, thresholds and methods of assessment by each Australian State. We also include a breakdown of recent cases, including details on the plaintiff, the causes of injury and awarded damages amounts.

It aims to demystify many of the idiosyncrasies of personal injury litigation to assist insurers, brokers and their respective clients to understand the unique challenges presented by litigation in relevant states.

For more information on the specific requirements of each state regime, or if you have any questions on the content covered in this guide, please reach out to one of W+K's General Liability Partner contacts listed at the end.



Charles Simon
Partner, General Liability Product Line Leader
[T +61 2 8273 9911 charles.simon@wottonkearney.com.au](mailto:charles.simon@wottonkearney.com.au)

CONTENTS

Australian Capital Territory	1
New South Wales	5
Queensland	8
South Australia	12
Tasmania	16
Victoria	20
Western Australia	25
Index – General Damages Guides	30
W+K Partner Contacts	32

Australian Capital Territory

Catherine Power (Partner) and Cindy Lim (Special Counsel)

PROCEDURAL RULES AND KEY DATES

The *Civil Law (Wrongs) Act 2002* (ACT) (**the Wrongs Act**) provides a comprehensive set of pre-litigation procedures for personal injury claims arising from alleged negligence.

With the exception of motor vehicle accident claims (which have their own pre-litigation procedure) and claims arising from alleged child abuse, section 51 of the *Wrongs Act* requires the claimant to give the respondent written notice of the claim within the earlier of the following:

- 9 months of the accident giving rise to the personal injury or the day symptoms of the injury first appeared; or
- 4 months of the claimant instructing a lawyer to advise on seeking damages for the personal injury or the day the respondent is identified.

Notice of claims arising from alleged child abuse need only be given a 'reasonable' time before the commencement of proceedings.

The *Wrongs Act* and its corresponding Regulations set out the information required to be provided in the claimant's notice of claim. Among other things, the claimant must provide an authority which enables the respondent (or its insurer) access to records and sources of information relevant to the claim. This is critical to a respondent's ability to commence its quantum investigations and it is important to therefore ensure this authority is provided.

Following receipt of the claimant's notice of claim, respondents have 1 month to raise any issues about the claimant's compliance with the requirements of section 51, after which time the notice of claim will be deemed to be compliant and the respondent will have no recourse to seek that the claimant rectify non-compliance. It is therefore important that close and careful attention be given to the contents of the notice of claim at the earliest opportunity (even if a legal representative has yet to be appointed).

Within 1 month of receipt of a complying notice of claim, a respondent must notify a claimant whether it is properly a respondent to the claim. If a respondent cannot determine whether it is a proper respondent, it must tell the claimant what further information it needs to make that determination. If the respondent does not consider itself a proper respondent to the claim, then it must tell the respondent that, and provide the claimant with any information which may help the claimant identify the proper respondent.

Having received a complying notice of claim, the respondent then has 6 months under the *Wrongs Act* to investigate the claim and advise the claimant whether liability is admitted or denied. In that same timeframe, the respondent is also required to have made a fair and reasonable estimate of damages and to seek to resolve the claim with the claimant.

To assist the parties to be able to properly consider the matter, Part 5.3 of the *Wrongs Act* provides for the exchange of information and documents between the parties relevant to matters in issue. This disclosure obligation extends to investigative reports, medical reports and reports relevant to the claimant's rehabilitation. The general rule is that documents must be disclosed within 1 month of receipt.

While the *Wrongs Act* seeks to mandate pre-litigation steps, it is not uncommon for claimants to commence court proceedings notwithstanding non-compliance with these requirements. That non-compliance will not be sufficient to warrant a permanent stay of proceedings and it is therefore incumbent upon respondents to raise any non-compliance with the court and seek adjustments to the standard court timetable to allow time for investigations to occur.

Once proceedings are on foot, both the Magistrates and Supreme Courts in the ACT have practice directions which provide a framework for the progress of litigated claims from the initiation of proceedings to final hearing. In short, both courts require parties to work towards having matters finalised within 12 months of the initiation of proceedings.

LIMITATION PERIODS

The general rule for personal injury claims is that they are not maintainable if commenced more than 3 years after the day the claimant was injured, or after the claimant knows they have suffered an injury and that injury is related to someone else's act or omission.

However, there are exceptions, as follows:

- There is no limitation period if the cause of action substantially arises from sexual abuse to which the claimant was subjected when they were a child.
- Compensation to relatives' claims must be brought within 6 years following the relevant wrongful act or three years immediately following the day of death of the person injured in that act (whichever is later).
- The limitation period in relation to claims arising from motor vehicle accidents turns on the scheme which was in place at the time of the accident.

ASSESSMENT OF DAMAGES

Non-economic loss / General damages

Except in the case of motor vehicle accident claims (where non-economic loss is now limited to damages for loss of quality of life), non-economic loss is awarded to compensate claimants for pain and suffering, loss of amenities of life, loss of expectation of life and disfigurement. There is no cap on non-economic loss in the ACT and general damages are assessed at large by reference to earlier comparable cases.

Past and future out-of-pocket expenses

Claimants are entitled to recovery of out-of-pocket expenses incurred as a consequence of their injuries arising from a compensable incident. These include medical, hospital and travel expenses. Any amount

paid by Medicare, private health insurers or workers compensation insurers are also recoverable where those entities will seek reimbursement from the claimant from any judgment or settlement.

Anticipated future treatment expenses are also recoverable, the assessment of which is usually guided by expert medical evidence.

Past and future economic loss

Claimants are entitled to be compensated for their loss of earning capacity causally related to injuries arising from compensable incidents. In its simplest form, this is calculated as the difference between what the claimant was earning on a nett basis prior and subsequent to the incident.

Where a claimant has been in receipt of incapacity payments from a workers compensation insurer, this amount is recoverable by the claimant but will form part of a payback to the workers compensation insurer following judgment or settlement.

Awards for the future are generally calculated up to usual retirement age (e.g. 67) but may extend beyond that age if the claimant can establish an intention to work beyond then but for their injuries. Where a mathematical calculation can be made for future loss, the multiplier tables are utilised and discounted at 3%.

Lost superannuation is also recoverable by reference to the relevant superannuation guarantee at the time.

Fox v Wood damages

This is the income tax component of any incapacity payments made by the workers compensation insurer. The allowance for this head of damage enables the workers compensation insurer to be reimbursed for the totality of the payments it has made even though the claimant does not receive the benefit of that portion of the incapacity payment.

Past and future domestic assistance and care

Claimants are entitled to recover an amount for domestic assistance and care (whether gratuitous or paid) which they have required as a consequence of their injuries arising from a compensable incident. This also includes assistance with domestic responsibilities which the claimant would otherwise have undertaken for the benefit of others (such as their children).

Gratuitous domestic assistance and care provided in the past is typically compensated at a rate of \$50 per hour.

The claimant's need for domestic assistance and care in the future is usually guided by expert evidence and, in particular, occupational therapists who have expertise in this field and are also often able to provide an assessment of the likely commercial cost of provision of the domestic assistance and care needs of the claimant.

Other notes

Interest is allowable on the past component of all heads of damage, including general damages.

Future losses are usually calculated at a weekly rate and then discounted using the 3% table of multipliers. Discounts can also be applied for the vicissitudes of life, typically by 15% but this figure will be adjusted depending on the claimant's personal circumstances.

INJURED WORKERS

The *Workers Compensation Act 1951* (ACT) establishes the workers compensation scheme in the ACT providing for incapacity payments and treatment expenses to workers who sustain injury during the course of their employment on a no-fault basis. Unlike other jurisdictions, there is no restriction on the duration a worker can receive workers compensation benefits,

though there is scope for workers to agree to accept a lump sum payment in commutation of their ongoing entitlements.

Workers are not restricted from bringing a concurrent or subsequent common law claim against their employer and/or any other negligent person or entity. Those claims and any entitlement to damages are governed by the *Wrongs Act*.

If an employer does not hold workers compensation insurance, a worker can bring their claim (including any common law claim) against the statutory Default Insurance Fund. However, if there is any other person or entity from whom the worker can recover damages, the Default Insurance Fund will have no liability. Should the Default Insurance Fund be required to make payment to the worker (including in respect of any common law claim), it can seek to recover those payments at a rate of three times from the uninsured employer.

Australian Government employees

The workers compensation scheme for employees of Australian Government agencies and statutory authorities is governed by the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**). The SRC Act provides a similar entitlement to incapacity payments and treatment expenses to Australian Government workers injured in the course of their employment. The scheme is managed by Comcare.

While employees can elect to bring a common law claim against their employer, damages are restricted to non-economic loss and are capped. However, these restrictions do not apply for claims against negligent third parties.

RECENT CASES AT A GLANCE

Case	Date	Plaintiff details (at time of incident)	Cause of action	Injuries	General damages	Total damages
<i>ND v AB (No 3) [2022] ACTSC 197</i>	3/08/2022	Female, 12	Historical sexual abuse	Psychological injury – Plaintiff was sexually, physically and emotionally abused by her maternal uncle when she was 12 to 13 years old. History of other injuries throughout plaintiff's life.	\$240,000	\$762,023 (Note, claim brought against perpetrator only and was not defended).
<i>Mcintosh v Canberra Choral Society [2022] ACTMC 16</i>	15/07/2022	Female, 68	Occupier's liability	Left shoulder, wrist and knee – Plaintiff was impacted on her left side after falling into a gap when traversing a temporary stage.	\$120,000	\$260,621.56
<i>John XXIII College v SMA [2022] ACTCA 32</i>	29/06/2022	Female, 20	Negligence	Psychiatric injury – Plaintiff attended a social event which commenced at the residential college and concluded at a nightclub. Plaintiff alleged that during the event she was sexually assaulted by another resident of the college.	\$90,000	\$267,500
<i>Ryan v Eastlake Football Club Limited (No 3) [2022] ACTCA 29</i>	23/06/2022	Male, 57	Intentional tort	Soft tissue injury and humiliation – Plaintiff was at a club where he had a dispute with staff and alleged he was thereafter assaulted and unlawfully detained.	\$50,000	\$57,500
<i>Rubino v Ziaee [2021] ACTSC 331</i>	23/12/2021	Male, 39	Medical negligence	Right foot – Plaintiff sought damages against his GP for treatment of a hyperkeratosis over a 3-year period. Plaintiff's foot ultimately became infected and required emergency surgical intervention.	\$72,000	\$184,645

Case	Date	Plaintiff details (at time of incident)	Cause of action	Injuries	General damages	Total damages	
<i>Kone Elevators Pty Ltd v Shipton, Massouras, Pattinson, Soesman</i> [2021] ACTCA 33	5/11/2021	Female, 50	Negligence	Plaintiffs were passengers in a lift which suddenly stopped on two occasions when travelling at speed.	Neck – C6/7 disc herniation and nerve root compromise with pre-existing disc injury. Surgery was required otherwise she could have become a quadriplegic.	\$140,000	\$1,913,960.17
		Female, 44			Left shoulder and hip, right wrist – soft tissue injury to the left shoulder and hip, right wrist fracture.	\$35,000	\$58,232.95
		Female, 43			Neck and shoulder – Neck trauma which has developed into cervical spondylosis (aggravation of a pre-existing injury), shoulder injury secondary to the neck trauma.	\$90,000	\$115,526.37
		Female, 28			Neck, shoulder and back – Musculoligamentous injury to neck and both shoulders with possible rotator cuff injuries, and exacerbation of previous mechanical lumbar back pain.	\$20,000	\$24,194.35
<i>Poole v Zagar</i> [2021] ACTSC 140	12/07/2021	Female, 29	MVA	Neck, lower back and psychological injury – Plaintiff's car was struck from behind by another car.	\$90,000	\$157,277.54	
<i>Costa v Goudappel & Anor</i> [2021] ACTMC7	20/05/2021	Female, 67	MVA	Left shoulder – Plaintiff was a passenger in a car involved in collision with another vehicle. Plaintiff had underlying arthritic condition to her left shoulder and chronic pain.	\$20,000	\$31,122.25	

New South Wales

Lesley Woodmore (Partner) and Chad Farah (Senior Associate)

PROCEDURAL RULES AND KEY DATES

There are no regulated or mandated pre-litigation steps for general liability (personal injury) claims in NSW (this statement however, does not apply to personal injury claims arising from motor vehicle accidents or employment).

A request for 'preliminary discovery' under the *Uniform Civil Procedure Rules* however, can be made. This is usually done by way of letter to an Insured requesting documents enabling a claimant to decide:

- if they should commence court proceedings; and/or
- who to sue.

If a request for preliminary discovery is not appropriately responded to, a claimant may:

- (a) file an application in court requesting the Insured to provide the requested documents – this can have costs consequences; or
- (b) simply commence proceedings in Court.

We suggest proceeding with caution – an overzealous pre-litigation disclosure of simply any document called upon can have disastrous consequences to the defence of a claim once litigated.

LIMITATION PERIODS

The timeframe for commencing court proceedings by way of a Statement of Claim is regulated predominantly by the *Limitation Act 1969* (NSW) (**Limitations Act**).

Where the injury or death occurs on or after 6 December 2002 (**post-2002**), the limitation period is ordinarily 3 years from when the cause of action is 'discoverable' by the claimant: (ss50C and 50D of the **Limitations Act**).

Actions arising from death or personal injury due to child abuse or dust inhalation have no limitation period.

Product liability

There are similar provisions under the *Consumer and Competition Act 2010 (Cth)* (**CCA**), which is federal legislation, concerning concepts such as discoverability and the 3 year post-discoverability limitation period (ss87F to 87K).

ASSESSMENT OF DAMAGES

The assessment of damages for personal injury liability claims in NSW is predominantly governed by the *Civil Liability Act 2002* (NSW) (**CLA**) or the Federal CCA, whichever applies.

If there is a degree of uncertainty as to whether or when an 'economic loss' will arise in future (or whether the loss will entirely be related to the injuries), the court may impose a percentage discount on the award of damages for expenses, assistance and income loss to account for that uncertainty. This is called a discount for the 'vicissitudes of life'; the standard discount is considered to be 15% but it may be less or more depending on each case (s13 of CLA; *Avopiling Pty Ltd v Bosevski* [2018] NSWCA 146).

Multiplier tables are used for future calculations, discounted at 5%.

HEADS OF DAMAGES

Non-economic loss

Non-economic loss used to be referred to as ‘general damages’. It seeks to compensate for pain and suffering, loss of enjoyment of life, scarring and/or loss of life expectancy.

Non-economic loss is assessed by the court, with reference to comparable cases from the past, as a percentage of “a most extreme case” and is based on the way the claimant’s injuries have affected them personally.

The CLA and CCA both prohibit awards for any injuries falling under 15% of a most extreme case, and provide for differing monetary awards (at the time of judgment) corresponding with each percentage from 15% onwards as indexed each year (ss16 to 17A of the CLA; ss87L to 87T of the CCA).

ECONOMIC LOSS

Past and future out-of-pocket Expenses

These seek to compensate for expenses reasonably incurred by the claimant to the date of judgment due to their injuries (e.g. medical, hospital and travel etc.) as well as any expenses they will likely incur in future.

Amounts paid by Medicare and private health insurers are recoverable.

The future assessment will usually be guided by the expert medical evidence. Where there is an overlap of injuries pertaining to different medical disciplines, each medical expert will need to comment on the expenses likely to arise from the injuries that fall within their own expertise.

Past and future gratuitous and commercial domestic care and assistance

These payments seek to compensate:

- **the claimant’s family or friends** for free assistance provided or likely to be provided to the claimant based on average weekly incomes in NSW. This is known as “gratuitous” assistance. The award will be made to the claimant, who is expected to pass on the funds to those who have helped them. However, both the CLA and the CCA prohibit awards of damages in this regard unless the assistance has been maintained or will be maintained at a minimum of 6 hours per week and for at least 6 consecutive months (s15 of the CLA; s87W of the CCA)

- **the claimant’s dependents** to whom the claimant was providing gratuitous assistance which was likely to continue but for the injuries. The award will again be made out to the claimant, who is expected to pass on those funds. However, both the CLA and CCA prohibit awards of damages in this regard unless the assistance would have been maintained at a minimum of 6 hours per week and for at least 6 consecutive months but for the injuries (s15B of the CLA; s87X of the CCA), and
- **the claimant** directly for any expenses reasonably incurred or likely to be incurred in paying for professional assistance (which is calculated at a higher rate). This is known as ‘commercial assistance’. There is no minimum hourly or monthly threshold for this award, but in terms of the future the claimant must be able to prove that gratuitous assistance will not reasonably be available to them in order to justify a court order for ongoing commercial assistance (*Miller v Galderisi* [2009] NSWCA 353).

The assessment will generally be guided by the opinions of Occupational Therapists who have expertise in this field (*Sampco Pty Ltd v Wruth* [2015] NSWCA 117).

Past and future loss of income

These payments seek to compensate injured claimants for lost earnings from business or employment, depending on their residual income capacity.

The assessment, which is subject to differing statutory maximums under the CLA and the CCA, will generally be guided by expert medical evidence and the level of pre and post-injury earnings shown from tax and other income records.

Awards for the future may be up to the ordinary retirement age (e.g. 67) or an older age if the claimant establishes they had an intention to work beyond then but for their injuries.

Lost superannuation is also compensable, usually at around 11% of the past net loss and around 14% of the future net loss.

Multiplier tables are used for future calculations, discounted at 5%.

Fox v Wood damages

This is the taxable amount paid by an injured worker on wages paid under the Workers Compensation scheme, and is recoverable if the Workers Compensation insurer is entitled to recover the gross amount paid to the worker (s151Z of the *Workers Compensation Act 1987*).

RECENT CASES AT A GLANCE

Case	Plaintiff details	Cause of action	Injuries	NEL Award
<i>Dhupar v Lee</i> [2022] NSWCA 15	39 year old female	Medical negligence	Wrongful pregnancy and birth due to failed contraceptive surgery.	38% as confirmed on appeal (\$261,000 at the time of original judgment)
<i>Pike v Coles Supermarkets Australia Pty Ltd; Pike v Solomon</i> [2021] NSWSC 1492	48 year old female	Public liability – Supermarket	Back injury requiring spinal fusion surgery.	29% (\$125,000)
<i>Richard Gillam v Cumberland Council</i> [2021] NSWDC 538	56 year old male	Public liability – Labour hire worker	Wrist fracture requiring surgery, although the claimant had various unrelated comorbidities.	28% (\$96,000), although the claimant was not successful at trial
<i>Frazer v Romeo</i> [2020] NSWDC 415	37 year old female	Public liability – dog attack	Psychological injury as well as arm and leg injuries.	28% (\$92,000)
<i>Mohammed Abed v Canterbury-Bankstown Council</i> [2020] NSWDC 55	Male, disability pensioner, age not stated in the judgment (but estimated to have been in his 50s)	Public liability – Council pothole	Foot fracture which was managed conservatively. However, the claimant had pre-existing neck, back and knee conditions and pre-existing PTSD.	21% (\$26,320)

INJURED WORKERS

Injured workers in NSW have access to a statutory scheme governed by the *Workers Compensation Act 1987* (**WCA**). The scheme allows periodic payments for medical expenses incurred, lost wages and a one-off lump sum compensation depending on the percentage of the worker’s Whole Person Impairment (**WPI**).

If an injured worker attains an undisputed 15% WPI or more, they are entitled to recover modified common law damages from their employer arising from negligence. This is called a Work Injury Damages (**WID**) claim (s151H of the WCA).

Section 151Z of the WCA enables the Workers Compensation insurer to recover the *statutory* benefits it has paid from any negligent third party. The following can happen:

- the employer (via the Workers Compensation insurer) can commence independent 151Z proceedings for recovery against the non-employer Insured, even if the injured worker did not make a claim against the insured. The employer will need to prove the insured was in fact negligent and its hypothetical liability for damages to the worker actually covers the recovery amount sought;
- if the injured worker has attained 15% WPI or more, the employer may be joined to any proceedings commenced against the non-employer insured. There will be an apportionment of liability (and damages) between the employer and the other defendants, including the insured, and
- if the injured worker has not attained 15% WPI and has not sued the employer but has made a claim against the non-employer insured nonetheless, the insured’s liability for damages may be reduced to reflect the percentage share of the absent employer’s responsibility.

Depending on its percentage share of the responsibility in causing the worker’s injuries, the employer may not be successful in recovering some or all of its payback (*South West Helicopters Pty Ltd v Stephenson* [2017] NSWCA 312).

Queensland

Scott Macoun (Partner) and Ashley Shuttleworth (Senior Associate)

PROCEDURAL RULES AND KEY DATES

A comprehensive pre-litigation procedure for personal injury claims is set out in the *Personal Injuries Proceedings Act 2002* (Qld) (**PIPA**). Whether there has been a breach of duty, and certain restrictions on recoverable damages, are governed by the *Civil Liability Act 2003* (Qld) (**CLA**).

Complying with PIPA is compulsory before commencing litigated proceedings for personal injury claims in Queensland, with some limited exceptions. The purpose of PIPA is to promote the early resolution of claims without the need to proceed to litigation.

PIPA provides the following key steps and timeframes:

Section 9

A claimant must serve a **Part 1 Notice of Claim (Notice)** within 9 months of the injury or 1 month after first consulting a lawyer. A Notice can be served outside this time with a reasonable excuse for delay. Delay is not difficult for the claimant to overcome, absent prejudice to the respondent.

Sections 10 and 11

A respondent must confirm whether or not it is a **proper respondent** and identify any other parties that are proper respondents within 1 month of receiving the Notice. Acknowledgement by a respondent that it is a proper respondent is not an admission of liability, only that it is the correct party to sue.

Section 20

A respondent must provide written notice to the claimant stating **whether liability is admitted or denied** within 6 months of receiving a compliant Notice.

Sections 22 and 27

The parties must **make full disclosure** of all documents “*about the circumstances of, or reasons for, the incident*” or relevant to the claimant’s injuries and loss.

Sections 36 and 39

Before litigation is commenced the parties must participate in a **compulsory settlement conference**. If the claim does resolve each party must make a **mandatory final offer (MFO)**, which must be considered by the court in respect of costs if the party achieves an outcome at trial better than its MFO.

Regarding disclosure required under PIPA, **legal professional privilege is abrogated** for certain classes of documents including investigative and medical reports: section 30(2). They must be disclosed even if privileged. Evidence suggestive of fraud can also be withheld, but only after applying to the court *ex parte* for an order (section 30(3)).

If a claim fails to settle during the pre-litigation process, the claimant must **file proceedings** within 60 days after the conclusion of the compulsory conference. The *Uniform Civil Procedure Rules 1999* (Qld) (**UCPR**) will then apply to the proceeding.

PIPA does not apply to:

- personal injury within the meaning of the *Motor Accident Insurance Act 1994* and in relation to which that Act applies;
- injury within the meaning of the *Workers Compensation and Rehabilitation Act 2003* (Qld) (**WCRA**) and in relation to which that Act applies (ie where the respondent to the claim is the claimant’s employer); or
- dust diseases.

The CLA essentially codified the common law as it related to negligence. It introduced defences of obvious risk, inherent risk and risks of dangerous recreational activities, but these have rarely been upheld by the courts. It maintained a defence of voluntary assumption of risk.

The CLA also reverses the onus of proof regarding breach of duty in institutional abuse cases, (i.e. once the claimant proves the abuse took place). The institution must prove it took all reasonable steps to prevent the abuse (sections 33D and 33E, CLA).

Property damage and other non-injury claims

Claims for property damage and economic loss are governed by the CLA and can be litigated pursuant to the UCPR without any pre-court process.

The CLA enshrined a system of proportionate liability for these claims, which does not apply to personal injury claims (liability remains joint and several for personal injury).

ASSESSMENT OF DAMAGES

There are several statutory restrictions and rules regarding the assessment of damages for personal injury claims in Queensland. However the underlying fundamental principle of damages assessment remains: **damages are assessed to place the plaintiff in the position they would have been in absent the harm, as far as possible.**

HEADS OF DAMAGES

General damages/pain and suffering

Queensland has no threshold for general damages.

Damages are assessed by assigning an 'Injury Scale Value' of 0-100 to the claimant's dominant injury, together with any uplift justified by additional injuries sustained: schedule 4 to the *Civil Liability Regulation 2014* (Qld). The final ISV equates to an indexed sum of money (the current maximum as at 1 July 2022 is \$414,000).

If the WCRA applies to a claim – i.e. if the claimant's employer is also a respondent to the claim – the CLA and restrictions on general damages will not apply to

non-employer defendants. Generals are assessed at common law based on prior similar decisions of the courts. Generals are typically 20%-100% higher in that event, though the difference varies significantly based on injury type and severity.

Past and future special damages

Direct expenses for treatment, rehabilitation, medications and similar.

Past: assessed by reference to evidence of expenses (claimant receipts, and charge notices from Medicare Australia, WorkCover Queensland and private health insurers).

Future expenses are assessed by reference to medico-legal expert recommendations.

Past and future economic loss

This loss relates to direct and anticipated loss of earnings from employment due to the injuries sustained.

Past loss is evidenced through tax returns and payslips, by comparing earnings pre and post-injury and ensuring any reduction in earnings is supported by medical evidence regarding the effect of the injuries sustained.

Future loss is evidenced by either:

- a calculation of mathematically calculable future lost earnings (i.e. the claimant has and will continue to lose a fixed sum per week due to their injuries); or
- a global allowance based on the general diminution of the claimant's earning capacity anticipated in the future based on the nature of the claimant's employment, their age and the anticipated effects of the injury as supported by the medico-legal expert evidence or other treating medical evidence.

Damages will also include interest on past, and future loss of superannuation (presently 9.5%-10% on past and 11%-11.33% on future).

Past and future gratuitous or paid commercial care and assistance

Section 59 of the CLA applies a threshold for gratuitous care claims: the claimant must have experienced a need for care and assistance related to their injury of at least 6 hours/week for more than 6 months in order to recover any damages for care.

Once the threshold is met, all care requirements supported by the medico-legal evidence are recoverable.

If the WCRA applies to a claim – ie if the claimant's employer is also a respondent to the claim – the CLA and restrictions on care will not apply to non-employer defendants. Care will be recovered 'from the ground up'.

The section 59 threshold does not technically apply to claims for paid commercial care and assistance, but the courts have been disinclined to make substantial commercial care awards – past or future – without substantial evidence of past paid care being incurred by the claimant prior to trial. That might differ for a claimant who had no access to friends or family for assistance.

Gratuitous care is typically compensated at between \$30-\$40/hour. Paid commercial care and assistance is based on the evidence in a particular claim, but is typically higher at between \$45-\$75/hour depending on the nature of the assistance.

Interest

Interest is not recoverable on general damages: section 60, CLA.

Fox v Wood damages

Recoverable where WorkCover Queensland has paid tax to the ATO on behalf of the claimant during the statutory workers' compensation claim. Those tax amounts are refundable to WorkCover if the claimant succeeds in their claim against the employer or a non-employer respondent, so they are recoverable in the claim.

Exemplary, punitive or aggravated damages

These damages cannot be awarded in a claim for personal injuries: section 52, CLA.

That restriction does not apply to:

- intentional torts and unlawful sexual assault (section 52(1), CLA;) or
- dust disease claims: the entire CLA is excluded by section 5(1)(c).

RECENT CASES AT A GLANCE

Case	Date	Plaintiff details	Cause of action	Injuries	General damages	Total damages
<i>Kickbusch v Lehane & Anor</i> [2022] QDC 16	14/02/2022	Male, 47	MVA	Cervical spine injury – Plaintiff was struck on a motorcycle by a truck. Also sustained shoulder and lumbar spine injuries. ISV of 11 assessed (including 30% uplift for other injuries).	\$17,760	\$288,475
<i>Kup-Ferroth v A1 Custom Stainless and Kitchens</i> [2022] QDC 3	21/01/2022	Male, 31	Workplace liability	Lumbar spine and second psychological injury – L5/S1 disc protrusion lifting a benchtop. ISV of 12 assessed (10 for the dominant lumbar spine injury).	\$19,270	\$821,381
<i>Brockhurst v Rawlings</i> [2021] QSC 217	27/08/2021	Male, 38	Historical sexual abuse	Psychological injury – Plaintiff was sexually abuse by his school teacher when he was 13 years of age. He alleged that their relationship commenced in the first year of high school and that they had sexual intercourse by the time he was 14 years old. As a result of the abuse, he was found to have suffered a depressive disorder.	\$65,000	\$1,443,459
<i>Belmont v McDonalds Australia Ltd</i> [2020] QDC 319	11/12/2020	Female, 46	Occupier’s liability	Left shoulder – Plaintiff was walking in the carpark to the entry of a McDonald’s restaurant and fell heavily to the ground when she was stepping from a bollard onto the concourse outside the store entry. In an attempt to break her fall, she extended her left arm sustaining a fracture of her proximal left humerus. Item 97 – Moderate Shoulder Injury (ISV 10).	Plaintiff not successful; General damages assessed at \$17,760	\$133,997
<i>Cootes v Concrete Panels (Qld) Pty Ltd</i> [2019] QSC 146	11/06/2019	Male, 57	Workplace liability	Lumbar spine – Fractures of L3 vertebra and right L1 and L2 transverse process. Plaintiff was caught under a collapsed excavation.	\$99,550 (ISV) \$110,000 (at law)	\$909,504
<i>Ringuet v State of Queensland</i> [2019] QDC 91	06/06/2019	Female, 52	Workplace liability	Lumbar spine – Musculo-skeletal injury. Plaintiff was a nurse in a Psychiatric Intensive Care Unit and was injured in the course of a patient escaping the Unit.	\$10,940	\$326,313
<i>Rushton v Woolworths Ltd</i> [2016] QDC 110	20/05/2016	Female, 69	Occupier’s liability	Hip, knee and ankle – Plaintiff was impacted on her left side by a trolley that was being pushed or maneuvered by an employee of the defendant. Plaintiff had underlying arthritic condition to her knee. Knee was considered dominant injury. Item 139 – Moderate Knee Injury (ISV 7)	\$8,720	\$14,917

OTHER NOTES:

Present value of future losses

Future losses are usually calculated at a weekly rate and then discounted for present value of the future loss by using the **5% table of multipliers**.¹ This generally applies to future special damages, future economic loss, future care, and any other compensation for future losses.

Vicissitudes of life/contingencies

Future economic loss and care are typically discounted by a minimum of 15% for contingencies or the vicissitudes of life. This is a recognition by the court that some other factor in the future could have prevented the claimant from earning an income or rendered the claimant in need of gratuitous care and assistance even if the subject injury had not occurred (i.e. the claimant might have contracted a disease or some other injury that would have stopped them working or rendered them infirm).

The rate of discount may vary based on the claimant's personal circumstances (i.e. a prior degenerative medical condition) and the nature of the loss being compensated for.

LIMITATION PERIODS

Claims for personal injury cannot be brought after the expiration of three years from the date on which the cause of action arose (section 11, *Limitation of Actions Act 1974* (Qld) (**LAA**)). This date the cause of action arose will usually be obvious – the date the injury occurred – but for latent injuries or those occurring over a period of time, the cause of action will usually arise on the date the claimant first experienced symptoms.

The claimant can obtain an extension of the limitation period if they identify a 'material fact of a decisive character' in relation to their cause of action: section 31, LAA. In that case, they have 12 months from when that fact came to their knowledge to commence proceedings.

Dust disease and sexual abuse claims

Claims relating to dust disease have no limitation period (section 11(2), LAA).

Claims relating to sexual abuse of a child have no limitation period (section 11A, LAA). The court can still order a permanent stay on a claim if the effect of the lapsed time on the defendant is so burdensome that a fair trial is not possible.

Limitation under PIPA

It is not uncommon for a claimant to commence a PIPA claim immediately prior to the expiry of their three year limitation period. If this occurs, a claimant can obtain:

- an extension of their limitation period (section 59), or
- leave to proceed despite non-compliance with PIPA, with proceedings then stayed until PIPA is complied with: section 43.

A court order is required in either case, however respondents will typically consent in the absence of prejudice to avoid unnecessary costs.

INJURED WORKERS

The **WCRA** establishes the workers' compensation scheme for Queensland providing benefits for workers who sustain injury during the course of their employment including for dependents if a worker's injury results in death.

Statutory claim

If a worker sustains an injury at work, they are entitled to lodge a statutory ('no fault') claim with WorkCover Queensland for the payment of statutory benefits. WorkCover will make payment of hospital, medical, rehabilitation and travel expenses and weekly benefits for lost wages (supported by ongoing certification from treating or independent medical providers).

WorkCover has a statutory right to:

- recover benefits paid if the injured worker receives damages for the injury from the employer or another entity (i.e. a negligence claim): section 207B, WCRA. These benefits will form a part of the claimant's recoverable damages in any successful negligence action, and so will not be the subject of a separate recovery action against a PIPA respondent;
- recover benefits paid directly from a party liable for the injury, if the claimant elects not to pursue a damages claim against that party, by way of subrogation: section 207B(8), WCRA. Anecdotal WorkCover rarely if ever exercises that right (likely because claimants almost always sue any potentially liable party themselves).

Common law claim

If an injured worker sues both their employer and a non-employer respondent for the same incident, apportionment of liability occurs in the usual way at law based on the respondents' respective fault.

However if an injured worker sues a non-employer and elects not to sue their employer, the non-employer respondent is prevented from joining the employer as a contributor or third party (section 237, WCRA and *Bonser v Melnaxis* [2000] QCA 13).

The CLA is excluded from operation in relation to an injury subject to the WCRA (i.e. an injury sustained at work: section 5, CLA). The exclusion of the CLA results in all damages being assessed against non-employer respondents at common, without the restrictions contained in the CLA (see '*Assessment of damages*' above).

¹ This is to offset the benefit the claimant could obtain by investing the lump sum amounts now and earning interest on the money before they actually require the amounts to pay for treatment or care, or to use as weekly income.

South Australia

Cheryl Phillips (Partner) and Matthew Elson (Special Counsel)

PROCEDURAL RULES AND KEY DATES

The Uniform Civil Rules 2020 (SA) came into operation on 18 May 2020 which apply to all actions issued in the Supreme, District and Magistrates Court.

The Rules require parties to attempt to resolve disputes before the commencement of litigation and often involve insurers at an early stage.

The pre-action steps include the requirement to give early notice of personal injury claims. The claimant must within 6 months after the day on which the incident occurred (or within one month after becoming aware that the injury was caused by the negligence of a person), serve on the person potentially liable a written notice of injury that identifies the injured person's details, circumstances of the injury, why the person is potentially liable and identifying medical records required.

A recipient of a notice of injury must, within 6 weeks, serve a written response setting out:

- the recipient's address for pre-action service;
- providing a copy of any requested medical records in the possession, custody or power of the recipient;
- suggestions for next steps (for example, further investigation, obtaining expert evidence, negotiation, alternative dispute resolution or an invitation to institute a proceeding).

Prior to commencing a claim in the Court (subject to limited exceptions), the injured person must serve a pre-action claim (akin to a formulated claim) that complies with Rule 61.7. This written notice must, amongst other things:

- identify each proposed cause of action in sufficient detail to enable the respondent to decide whether and to what extent to admit the claim, to respond to the claim and to respond to the injured person's offer;
- attach a copy of any expert report;
- make an offer to settle the claim in terms capable of giving rise to a legally binding agreement if accepted;
- propose a date and time for a pre-action meeting at which parties participate in settlement discussions.

Within 30 days of receiving a pre-action claim, the respondent must serve on the claimant a pre-action response, which:

- accepts or rejects the injured person's offer;
- as far as reasonably practicable, responds to each of the injured person's identified causes of action in sufficient detail to enable the injured person to decide whether, and to what extent, to pursue the claim and to respond to the respondent's offer;
- attaches sufficient material (including expert reports and medical records held by the respondent) as is necessary for the injured person to respond to the respondent's offer; and
- confirms the suitability of the pre-action meeting details.

A pre-action meeting (settlement negotiation) is to be held within 21 days after the time for service of the last pre-action document (or as agreed by the parties).

Absent agreement, the meeting is to be face to face, however the parties can agree to have a telephone meeting or video meeting. The parties are to negotiate in good faith; identify the main issues in dispute and primary cause of disagreement; and how the issues may be resolved without recourse to litigation. The parties are directed to consider alternative dispute resolution, and to consider whether to appoint an independent person to chair the pre-action meeting.

The Rules provide cost consequences for non-compliance with the pre-action steps, including the applicant not being entitled to recover the costs of preparing, filing or serving the Claim.

The applicant must certify on the Claim whether the pre-action steps have been complied with. If there is non-compliance with pre-action steps, a special directions hearing will be listed by the Court at which time the Court may make such orders as it thinks fit including ordering that any pre-action step or steps in lieu be taken, staying other steps in the proceeding, making orders for ordinary steps in the proceeding to be taken or making orders for costs. The usual rule is that the party in default pays the costs of the other parties' attendance at the special directions hearing and costs thrown away by reason of the default on an indemnity basis forthwith.

The Courts have further discretion to take non-compliance into consideration when making cost orders after the final determination of the matter.

ASSESSMENT OF DAMAGES

General damages

Damages for non-economic loss may only be awarded if:

- the injured person's ability to lead a normal life was significantly impaired by the injury for a period of at least seven days, or
- medical expenses of at least the prescribed minimum (currently \$4,720) have been reasonably incurred in connection with the injury.

Damages are assessed by assigning a numerical value between 0 – 60 to the injury depending on its type, nature and severity. The numerical value equates to an indexed sum of money based on the year in which the injury was sustained.

The maximum amount of damages that can be awarded for an injury occurring in 2023 (injury worth 60 points) is \$406,420.

Economic loss

An award of damages for past and future economic loss involves an assessment of what the injured person would have earned but for the accident. Damages can be calculated by way of a mathematical calculation (based on net weekly loss) or on a more global basis considering an injured person's work skills and earnings history, tax returns, payslips and workers compensation records (where relevant).

Section 54 of the *Civil Liability Act 1936* (SA) (**CLA**) provides that no damages are payable for the first week of incapacity.

Where future economic loss is calculated by reference to a net weekly loss, it is discounted for present value by using a multiplier with a discount rate of 5% before a further adjustment for contingencies (usually 15%) depending on the personal circumstances of the injured person.

Damages are not to exceed the prescribed maximum (being \$3,779,100 as at 2023).

Superannuation

Awards for past loss of superannuation are based on the relevant superannuation guarantee rate at the time of the loss.

Future loss of superannuation is commonly assessed at 12%, being the superannuation guarantee rate from 1 July 2025.

Past and future gratuitous and paid care

Awards of damages for gratuitous care or paid care are based on services that are reasonably required by the injured person, based on expert medical opinion.

Section 58 CLA limits an award of damages for gratuitous care to those services provided by a parent, spouse, domestic partner or child of the injured person.

Damages for gratuitous services are not to exceed an amount that is four times the state average weekly earnings (currently \$6,632 (4 x \$1,658)).

The recent decision of *Amaca Pty Ltd and Werfel* [2020] SASCFC 125 limits the services that are considered compensable to those provided for the benefit of the injured person and not those provided for the benefit of the household.

Medical expenses

Damages for past and future medical expenses are awarded on the basis of the necessity or reasonableness of the medical, rehabilitation and pharmaceutical expenses based on expert medical opinion.

Amounts paid by Medicare are recoverable from settlement sums or judgments over \$5,000. A private health insurer may also seek reimbursement of amounts it has paid for treatment.

Consortium

Damages in the amount of \$5,000 - \$10,000 are commonly awarded for the loss or impairment of consortium suffered by a spouse or domestic partner of the injured person.

Solatium

Damages payable for solatium for the suffering caused to the spouse or domestic partner of a deceased are capped at \$10,000.

Interest

No interest is payable on non-economic loss.

Other

No amounts are payable for the costs of investment or management of damages.

RECENT CASES AT A GLANCE

Case	Date	Plaintiff details	Cause of action	Injuries	Total General Damages Awarded
<i>Clutterbuck v Pollifrone</i> [2021] SADC 15	19.02.2021	Female, 52	Negligence	Knee and psychiatric – the plaintiff was visiting the respondent’s farm and was injured when conveyor belts fell from the forklift the respondent was using and pinned her to the ground. The plaintiff experienced symptoms consistent with complex regional pain syndrome. She reported suffering from depression, anxiety, agoraphobia and cognitive impairment (CLA scale value 20).	\$48,354.50
<i>Paues v Battunga Country Lions Club</i> [2020] SADC 162 (P2’s determination) <i>Battunga Country Lions Club v Paues</i> [2021] SASCA 72 (P1’s appealed determination)	20.11.2020	P1 – Male, 36 P2 – Female, 33	Occupiers’ liability	Upper extremity, neck, back and knee – the plaintiffs were husband and wife spectators at a go-kart race and were hit by an out-of-control go-kart that broke through the bunting at the edge of the track. The first plaintiff sustained a right knee injury (CLA scale value 18). The second plaintiff sustained upper extremity (shoulder, elbow, wrist hand and thumb), neck, back and right knee injuries (CLA scale value 12).	P1 \$40,580 P2 \$21,850
<i>Sloan v Service Stream Limited</i> [2020] SADC 98	28.07.2020	Male, 48	Negligence	Lower back and psychiatric – the plaintiff was employed by a labour hire company and undertook pit and pipe work associated with the installation of the NBN. The defendant attempted to lift a P9 pit when he sustained a back injury. He had a significant pre-existing back condition (CLA scale value 9).	\$13,770
<i>Corso v Arias Holdings Pty Ltd & Ors</i> [2016] SADC 62	17.06.2016	Female, 36	Negligence	Nerve damage, scarring, disfigurement, psychiatric – the plaintiff underwent tattoo removal treatment with a paste that caused up to third degree burns on her ankle and back (CLA scale value 29).	\$74,430

INJURED WORKERS

The *Return to Work Act 2014* (SA) (**RTWA**) establishes the workers' compensation scheme for SA providing benefits for workers who sustain injury during the course of their employment including for dependents if a worker's injury results in death.

Statutory claims for a workplace accident

If a worker sustains a workplace injury in SA, they are entitled to lodge a claim for compensation through Return to Work SA. The injury must arise from employment that is connected with SA.

The RTWA differentiates between injured workers and 'seriously injured workers' (being a worker who has been assessed as having a permanent whole person impairment (WPI) of at least 35% for physical injuries and 30% for psychiatric injuries).

An injured worker (not a 'seriously injured worker') is entitled to income maintenance for only 2 calendar years from the date of first entitlement to weekly payments. For the first 52 weeks the worker is entitled to 100% of the difference between their average weekly earnings rate and the amount earned, if any, and for the next 52 weeks 80%.

After 2 years, a 'seriously injured worker' is entitled to 80% of the difference between their average weekly earnings and any earnings, until retirement age or they can elect to receive a once-off lump sum payment for economic loss instead of ongoing weekly payments (known as a redemption).

A worker's entitlement to medical and like expenses ends one year after returning to work or one year after ceasing to receive weekly payments of compensation. This limit does not apply to 'seriously injured' workers.

Effects of RTWA

Return to Work SA has a statutory first charge on any compensation payable to the worker by another entity.

RTWA prohibits workers from suing their actual employer except where the worker is 'seriously injured'. An action brought by a 'seriously injured' worker against their employer is limited to damages for economic loss only. There is little incentive for a 'seriously injured' worker suing an employer for economic loss damages because the worker can remain on weekly compensation payments set at 80% of their pre-injury earnings until retirement, or choose to redeem those payments for a lump sum. If the worker elects to sue at common law, those weekly payment entitlements are terminated on receipt of any award of economic loss damages.

Accordingly, Return to Work SA recoveries are usually driven by the worker bringing a damages claim against a non-employer defendant.

In cases where the worker sues a non-employer defendant at common law, there are statutory restrictions imposed on a non-employer defendant pursuing contribution from the employer.

LIMITATION PERIODS

Limitation of Actions Act 1936 (SA) provides that actions in respect of personal injury must be commenced within 3 years of the cause of action accruing.

If the injury remains latent for some time after its cause, the 3-year time period begins to run when the person becomes aware of the injury.

The Courts have the discretion to extend that limitation period when:

- the action is commenced within 12 months of the plaintiff ascertaining previously unknown "*facts material*" to his or her case; or
- the failure to commence the action within time was due to the defendant's representations or conduct; and
- the court is satisfied that in all the circumstances of the case it is "just" to grant the extension of time.

There is no limitation period for an action for damages relating to personal injury resulting from the abuse of the person when the person was a child.

Tasmania

Andrew Seiter (Partner) and Tushka Sridharan (Senior Associate)

PROCEDURAL RULES AND KEY DATES

Civil procedure in Tasmania is governed by the *Supreme Court Rules 2000 (Tas)* and the *Magistrates Court (Civil Division) Rules 1998 (Tas)*, which contain similar procedural rules and provide timeframes to respond to civil actions. The following paragraphs focus on the *Supreme Court Rules 2000 (Tas)*.

An action is commenced by the filing of a Writ in the registry which is to be served on the defendant(s) to the proceeding within 6 months after the filing of the Writ.

On application by the plaintiff made whilst the Writ is valid, a court may order that the original Writ and any concurrent Writ be renewed for a period the court deems fit if the defendant has not been served with the Writ.

A defendant must file a notice of appearance within 7 days of being served with the Writ.

A defendant has 21 days after the latter of the service of a statement of claim or the time limited for filing a notice of appearance to file a defence.

In an action for damages for personal injuries, the plaintiff is to advise the defendants(s) in writing within 50 days after the close of pleadings or otherwise agreed or ordered:

- the nature of the injuries
- any secondary illnesses
- the name of each hospital and medical practitioner attended as a result of the injuries
- expenses incurred due to the injuries
- the nature of employment or self-employment that the plaintiff would have been engaged in or was likely to have been engaged in but for the injuries
- estimated gross annual income, and
- whether the claim is that the injuries totally or partially impacted the plaintiff's earning capacity.

During the course of the proceeding the court may refer the parties to mediation in an attempt to seek to resolve the dispute. If the matter does not resolve at mediation the plaintiff must give a report to the court outlining that the mediation occurred and setting out the issues left to be determined.

Before trial, the parties must file a certificate of readiness with the court. The parties must specify that they have attended a compulsory conference including attempting to reach agreement on as many issues in dispute as possible and discussing the possibility of settlement of the action.

An offer of compromise is to be open for a period no shorter than 14 days.

A plaintiff is entitled to a costs order against a defendant taxed on a solicitor-client basis if, the plaintiff made an offer of compromise which was not accepted by the defendant at the time of judgment, and the judgment is no less favourable to the plaintiff than the terms of the offer.

ASSESSMENT OF DAMAGES

General damages

An annual government gazette sets out indexed amounts for non-economic loss under the *Civil Liability Act 2002* (Tas) (**CLA**).

In calculating general damages, the CLA refers to an Amount A and an Amount B. As of 1 July 2022, Amount A is \$6,500 and Amount B is \$32,500.

If the assessed amount of non-economic loss is less than Amount A, then no damages will be awarded for non-economic loss.

If the assessed amount of non-economic loss is between Amount A and Amount B, Amount A is subtracted from the assessed amount and the result is then multiplied by 1.25.

If the assessed amount of non-economic loss is more than Amount B, then the damages awarded equals the assessed amount.

In assessing damages for non-economic loss, a court may refer to previous decisions of that court or other Australian courts to establish the appropriate amount to be awarded.

Pre-judgement interest was introduced in 2019 by way of amendment to the *Supreme Court Civil Procedure Act 1932* (Tas). The amendment allows the court, when making a judgment requiring the payment of an amount of money, to order that the amount, or part of the amount, carries interest from the day after the cause of action arose and ending on the day on which judgment is entered. The interest rate from 1 July 2022 is 4.85%.

Gratuitous care

The CLA provides that a person may not recover damages for gratuitous services unless the services have or will likely be provided to the injured person for more than six hours per week and for more than 6 consecutive months.

In calculating damages for gratuitous services:

- the hourly rate is not to exceed one fortieth of adult average weekly earnings, and
- the weekly rate is not to exceed adult average weekly earnings.

An individual who was providing gratuitous services to another person prior to injury can claim for the loss of capacity to provide those services, providing that before the loss of capacity occurred:

- the person was providing the services to the other person for more than 6 hours per week and for more than 6 consecutive months and it was necessary for the services to be provided to the person; or
- the other person was an unborn child of the person before the injury occurred.

INJURED WORKERS

The *Workers Rehabilitation and Compensation Act 1988* (Tas) (**WRCA**) establishes the workers' compensation scheme for Tasmania which provides benefits to workers who sustain injury during the course of their employment including for dependents if a worker's injury results in death.

Statutory claims for a workplace accident

A worker is entitled to pursue a claim for compensation if he or she suffered an injury in the course of employment or contracted a disease which his or her employment contributed a substantial degree to.

If the injury to the worker resulted in death, an employer may be liable to pay compensation to the worker's dependents who, at the date of death, would have been the worker's dependents but for the injury.

An injury does not arise from a worker's employment merely because it occurs whilst the worker is travelling between his or her residence and the place of employment unless that journey occurred at the request or direction of the employer.

Compensation claims are not payable for illnesses of the mind arising from demotions, workplace discipline and failure to award promotions.

There are certain presumptions in the WRCA including, for example, a provision that where a state or government worker suffers post-traumatic stress disorder, the worker's employment is taken to have contributed a substantial degree to that injury in the absence of contrary evidence.

The injured worker must give notice of the injury to his or her employer as soon as practicable after the injury occurs and must make a claim for compensation within 6 months after the injury. There are exemptions to that requirement for certain conditions including, for example, the suffering of silicosis, dermatitis or lead poisoning by a mining employee.

Once notified of an injury, an employer must inform the worker within 14 days that the worker may have a right to a claim for compensation in relation to the injury.

If an employer receives a claim for compensation from a worker, then the employer or the employer's insurer must, within 28 days:

- notify the worker as to whether liability for the injury is accepted, and
- if no decision is made to accept or dispute liability for the injury, the employer or employer's insurer must specify the reasons why a decision has not been made and the steps to be taken to reach a decision.

If a worker is totally incapacitated, and that incapacity is supported by a certificate of a medical practitioner, their weekly payments of compensation are equal to the greater of:

- the worker's normal weekly earnings; or
- the ordinary time rate of pay of the worker for the work and hours during which the worker was engaged immediately before the incapacity.

If the worker is partially incapacitated, the compensation is made up of weekly payments for the period of incapacity which equals the difference between the worker's normal weekly payments and the amount that the worker is earning or would be able to earn in suitable employment during the period of incapacity.

The weekly payments are payable as follows:

- 100% of the weekly payment for the first 26 weeks post-incapacity
- 90% of the weekly payment for weeks 27 – 78 post-incapacity, and
- 80% of the weekly payment for week 79 post-incapacity but not exceeding nine years from the date of incapacity if the worker's impairment is less than 15% whole person impairment, with further increases to the proposed duration of compensation payments depending on the whole person impairment assessment.

A worker who suffers permanent impairment assessed at less than 5% (save for the loss of a finger or toe in part or in whole) is not entitled to compensation for permanent impairment.

A worker deemed to have suffered permanent impairment between 5-70% is entitled to compensation in accordance with the following formula:

- $\{18 + [6.1 \times (WPI - 5)]\} \times BS$
- WPI is the percentage of whole person impairment;
- BS is the basic salary.

The above formula also applies to permanent psychiatric impairment assessed between 10 – 70%.

Effects of RTWA

A worker's outstanding entitlement to compensation under the WRCA may only be settled by entering into a settlement agreement pursuant to which the worker agrees that all further claims to compensation are extinguished.

If a worker enters into a settlement agreement in relation to all outstanding entitlements to compensation within 2 years of the date the claim was made, the agreement must be approved by the Tribunal, taking into account factors including whether all reasonable steps have been taken to rehabilitate or retrain the worker and whether the worker has returned to work. A settlement agreement entered into after 2 years since the claim was made do not have to be approved by the Tribunal but may be referred to the Tribunal for review.

The payment of or entitlement to the payment of compensation in relation to an injury does not impact a worker's right to obtain damages in respect of that injury. However, where a liability has been incurred by an employer or other individual for the payment of damages to the worker, the payment of compensation shall be regarded as payment towards the discharge of that liability and will be set off against the amount of damages awarded.

If a worker's injury arises, in part, due to his or her own fault, the amount recoverable by the employer by way of indemnity or contribution is reduced to an extent that the Supreme Court of Tasmania considers just and equitable having regard to the degree of responsibility the worker had for the injury.

In circumstances where the injury to the worker creates a liability in a person other than the employer, the employer may seek to pursue indemnity or contribution from that other person in respect to the compensation paid to the injured worker.

LIMITATION PERIODS

The *Limitations Act 1974* (Tas) provides that actions in respect of personal injury must be commenced within three years of the date of discoverability.

The courts have discretion to extend that limitation period to 6 years from the date of discoverability when it is just and reasonable to do so.

There is no limitation period for an action for damages relating to personal injury arising from or related to the sexual abuse or serious physical abuse of the person when the person was a minor.

Actions may be brought against previously settled causes of action arising from or related to the sexual abuse or serious physical abuse of a minor if a court decides it is in the interests of justice to set aside the settlement agreement.

A court may consider any amount paid under a previous agreement even if the previous agreement is found to be wholly or partly void, if it is satisfied that it is just and reasonable to do so when awarding damages in a hearing of an action on a previously settled cause of action arising from or related to the sexual abuse or serious physical abuse of a minor.

RECENT CASES AT A GLANCE

Case	Date	Plaintiff details	Cause of action	Injury	Total General Damages Awarded
<i>Scattergood v Commonwealth</i> [2022] TASSC 21	13.04.2022	Female, 46	Negligence	Physical whiplash injuries and psychiatric injuries (adjustment disorder with depressed mood) – the plaintiff was injured in a motor vehicle accident with the injuries exacerbated in a subsequent “incident” involving the sudden braking of the car she was a passenger in.	\$100,000
<i>Dann v Port Sorell Bowls Club Inc</i> [2020] TASSC 47; <i>Port Sorrell Bowls Club v Dann</i> [2022] TASFC 2	02.02.2022	Male, 44	Negligence	Burns to hand, depression, anxiety, alcohol use disorder – The plaintiff was burnt when he was cooking sausages on the bowling club barbecue when the mug that was being used to catch the fat from the barbecue overflowed and caught fire. When the plaintiff attempted to move the mug it got caught on a bracket and the fat spilt on his hand resulting in burns. There was a 15% reduction for contributory negligence.	\$80,000
<i>ZAB v ZWM</i> [2021] TASSC 64	22.12.2021	Male 10-16 at the time of incident (alleged abuse) and aged over 40 at trial	Assault and battery – sexual abuse	PTSD, depression – The plaintiff was sexually assaulted by his father from when he was 10 to 16 years old.	\$300,000 (plus interest of \$67,500)
<i>Partridge v Hobart City Council</i> [2012] TASFC 3	27.07.2012	Female, 40	Negligence	Back, knee and hand – plaintiff slipped on wet steps after leaving her solicitors’ office. There was a 20% reduction for contributory negligence.	\$40,000
<i>Dodge v Snell</i> [2011] TASSC 19	21.04.2011	Male, 41	Negligence	Collarbone, shoulder, ribs, punctured lung and adjustment disorder – plaintiff was injured in horse race due to the allegedly negligent riding of another jockey (the defendant) causing the plaintiff’s horse to fall.	\$80,000
<i>Hall v Hall</i> [2014] TASSC 37	23.07.2014	Male, 34	Negligence	Back, leg, neck and psychiatric – The plaintiff was in a vehicle being driven by his wife. As she attempted to overtake other vehicles, she lost control of the car which hit an embankment and rolled onto its roof.	\$45,000

Victoria

Andrew Seiter (Partner) and Sophie Crowther (Senior Associate)

TYPES OF CLAIMS IN VICTORIA

In Victoria, most claims brought for personal injury fall into one of two categories. This paper provides an overview of these categories while also outlining damages awards made in recent judgments.

The first category is “general liability” claims. These claims usually rely on common law causes of action, including for negligence or breach of contract. It covers a wide range of claims including those arising from injuries in public places, sports or recreational injuries and medical negligence. These claims are principally regulated by the *Wrongs Act 1958* (Vic) in particular, Parts VB and VBA.

The second category is claims arising from injuries sustained in the course of employment, which are governed by the *Workplace Injury Rehabilitation and Compensation Act 2013* (the **WIRC Act**) or its predecessor the *Accident Compensation Act 1985* (the **ACA**) in cases where the alleged injuries were sustained prior to 1 July 2014.

CATEGORY 1: GENERAL LIABILITY CLAIMS

General damages

A prominent part of most personal injury claims is the claim for general damages, also known as “pain and suffering” damages.

To recover general damages in Victoria, under the *Wrongs Act*, a claimant must usually establish that he/she suffered a ‘significant injury’ caused by the alleged negligence of the respondent.

Significant injury is established using the following degree of whole person impairment (**WPI**) thresholds:

- 5% or more for spinal injuries
- more than 5% for physical injuries other than spinal injuries, and
- 10% or more for psychiatric injuries.

A claimant’s WPI is assessed by an approved medical practitioner. The medical practitioner must issue a “certificate of assessment” if he/she determines that the claimant’s injuries satisfy the applicable impairment threshold.

The claimant must serve the certificate of assessment and a prescribed information form on each respondent to his or her claim.

If a respondent accepts that it is a “proper respondent to the claim”, it has a **strict 60 days** from the date of service of the certificate of assessment to advise the claimant that it:

- accepts the certificate of assessment; **or**
- has/will refer the matter to a **Medical Panel** to determine whether the degree of impairment resulting from the claimant’s alleged injuries satisfy the threshold level.
- requires more information to determine if it is a “proper

respondent” to the claim; or

- disputes it is a “proper respondent”, in which case the claimant must advise within 14 days if it accepts that position.

The Medical Panel will generally re-examine the claimant before determining whether the injuries satisfy the threshold level to claim general damages. The Medical Panel may disagree with the claimant’s initial assessor, making a Medical Panel a powerful tool for respondents and a potential way of minimising claims at an early stage. This makes the 60 day window for an important date to watch. If it is allowed to lapse, a respondent is deemed to have accepted the claimant’s certificate of assessment and there is no ability to extend time.

Other damages

It is important to note that the threshold requirements only act as a gateway to claim general damages. Other damages including economic loss, medical expenses and gratuitous/attendant care can be claimed without meeting the threshold.

Statutory caps – general damages and loss of earnings

The damages recoverable for general damages and loss of earnings are ‘capped’ under the *Wrongs Act*. The statutory caps are subject to indexation each financial year. The current caps are:

- general damages: \$660,970
- loss of earnings: \$3,986.70 (per week)

A 5% discount rate is also applied to the calculation of future damages, including loss of earnings.

Attendant and gratuitous care damages

Claimants can claim damages for attendant and/or gratuitous care services where they are solely and reasonably required due to the claimed injury. Examples include nursing, domestic care and other assistance to alleviate the consequences of injury.

The *Wrongs Act* permits recovery of damages for gratuitous/attendant care services where it is required by reason of the injury for more than 6 hours per week **or** for more than 6 months. In some other states, the claimant must satisfy **both** thresholds. If the care provided exceeds either threshold, damages can be awarded on the following basis:

- **less than 40 hours per week** – an hourly rate equivalent to one-fortieth of the average weekly total earnings for all employees in Victoria (currently **\$33.22 p/h**), and
- **more than 40 hours per wee** – the average weekly total earnings for all employees in Victoria (currently **\$1,328.90 p/w or \$36p/h**).

A claimant may also be able to recover a sum referable to their being rendered unable to provide gratuitous care to another person, for instance, their spouse, child or grandchild.

A 5% discount rate applies to any claim for damages for future attendant/gratuitous care.

PROCEEDINGS

Claimants generally have three years from the date of 'discoverability' to commence proceedings. This includes knowing the injury is serious enough to warrant proceedings and being able to identify the party/defendant they believe is at fault. This limitation period is suspended from the date the certificate of assessment is served to when either the certificate is accepted by the respondent or to when the Medical Panel process has concluded. Extensions to the limitations period will often be granted on a claimant making application to the Court unless the defendant can establish a material prejudice.

The majority of personal injury proceedings are brought in the County Court of Victoria, which has unlimited monetary jurisdiction, although the Supreme Court will hear more complex matters.

In the County Court, standard timetabling orders are set listing a trial either 10 months or 12 months from the date of the first administrative mention. Standard timetabling orders are a recent change imposed by the County Court which increases the procedural pressure on parties. Where parties used to be able to agree on a timetable tailored to each claim, they must now comply with orders prescribed by the Court. Our experience is that this leads to regular revisions/extensions of procedural timetables due to non-compliance with interlocutory orders.

Both the Supreme and County Courts require parties to attend mediation before proceeding to trial. We recommend allowing reasonable time between mediation and trial where possible to allow time for negotiations to continue if a resolution is not achieved at mediation.

TYPE 2: WORKPLACE INJURY CLAIMS

Overview

The second category is claims arising from injuries sustained in the course of employment. Two classes of claims fit into this category:

- damages actions brought by seriously injured workers, known as **serious injury proceedings** (under ss328/335 of the WIRC Act or for injuries before 1 June 2014, under s134AB of the ACA), and
- actions brought by the Victorian WorkCover Authority (**the VWA**) against negligent non-employer third parties to recover the compensation it has paid or may pay to or on behalf of a worker pursuant to s369 claims under the WIRC Act or s 138 of the ACA.

As the VWA has its own entitlement to issue recovery proceedings, there are often two claims arising from the same event/injury being pursued at the same time – the worker's serious injury action and the VWA's recovery action.

Serious injury application process

To issue a damages action, a worker must first make a Serious Injury Application to their employer and the VWA and establish they have suffered a 'serious injury' in the course of their employment. A worker has a 'serious injury' if he/she:

- suffers a WPI of **more than 30%** as assessed by an independent medical examination, **or**
- satisfies the 'narrative test' of serious injury. If the VWA determines that the narrative test is satisfied, it will issue a 'serious injury certificate' on application from the worker to issue a damages action.

Most workers who can bring claims fall into the second category. There is a significant body of law around what constitutes a 'serious injury' for the purposes of the narrative test. Key indicators are: the impairment must be permanent, cause pain/impairment or loss of significant bodily function.

Workers must serve a copy of his/her serious injury application on potential third parties. Often, this is the first a potential third party hears of a proposed action.

The VWA and the self-insurer appoint lawyers and has 120 days to consider the application.

The VWA can award a serious injury certificate for general damages only, or general damages and loss of earnings. In order to obtain a certificate for loss of earnings, a seriously injured worker must satisfy a further test of 40% permanent impairment of earning capacity to sue for pecuniary loss damage.

If the VWA refuses to grant a serious injury certificate, a worker can file an originating motion in the County Court seeking a review of the decision.

Statutory conference / offers

If the worker satisfies the serious injury threshold, he/she must participate in a pre-litigation case conference with the VWA as the employer's statutory insurer.

After the conference, the VWA must make a settlement offer to the worker (known as a 'statutory offer'). This offer can be \$nil. The worker then has 21 days to accept the VWA's offer or make a counter-offer.

The worker's counter-offer must remain open for 21 days. If it is not accepted, the worker has 30 days to issue proceedings.

A practice has developed where third parties are invited to the conference to explore early settlement and to participate in the statutory offer process. However, opportunities for early negotiations depend heavily on the attitude of the VWA's solicitors representing the employer as the only prospective defendant formally involved in the process.

Damages and statutory caps

Subject to receiving a serious injury certificate, the damages entitlement for injured workers is limited to general damages and damages for loss of earnings. The applicable statutory thresholds (indexed annually) are:

- general damages: \$660,970, and
- loss of earnings: \$1,518,180

A 6% discount rate applies to the calculation of future damages, including economic loss.

A worker cannot claim other heads of damage. Usually they receive further no-fault statutory compensation from the VWA – which ultimately forms part of the associated recovery action. The VWA can fund medical and care expenses, rehabilitation/retraining and pay weekly compensation for loss of income (known as 'weekly benefits') if a worker's work capacity is impacted by their injuries. A lump sum impairment benefit can also be awarded.

Any common law damages are reduced by the weekly benefits and impairment benefit paid to avoid double recovery.

PROCEEDINGS

Workers generally have 6 years from the date of their injury to bring common law proceedings against the party/defendant they believe is at fault. This limitation period is suspended from the day:

- a worker lodges an impairment benefit claim to either 30 days after the VWA determines the claim or notifies the worker of the Medical Panel's determination; and
- a worker lodges a serious injury application and ending upon common law proceedings being issued.

Third parties are not involved in, or have any control over, these limitation suspensions, which can be very significant and lead to damages actions being brought well after the actual 6 year mark. The Courts also tend to be generous in extending limitation periods, save where there is evidence of prejudice to the defendant.

Worker's damages actions and VWA recoveries are usually issued in the County Court of Victoria, although more complex cases can be issued in the Supreme Court of Victoria. The procedural guidance on timetabling orders discussed in the previous proceedings section applies.

VWA RECOVERIES

The VWA is entitled to recover statutory compensation paid and payable to an injured worker from liable third parties. VWA recovery actions are often brought against host employers in labour-hire arrangements, non-employer occupiers and manufacturers and suppliers.

The VWA's statutory entitlement to indemnity from a negligent third party is the lesser of:

- the amount of compensation paid or payable in respect of the compensable injury; or

- an amount calculated in accordance with the formula in s 369 of the WIRC Act and s 138 of the ACA.

In a practical sense, the first limb of the indemnity cannot be assessed with certainty because compensation payments can, conceivably, continue until death. Even claims that are closed can be re-opened.

The cap on the VWA's entitlement can therefore be determined under the second limb using the following formula.

$$[A - (B + C)] \times \frac{x}{100}$$

The formula is complicated and extremely unfavourable to third parties: It requires consideration of 3 things (as Factor B is no longer relevant).

- **Factor A** – This is the worker's **hypothetical common law entitlements** in respect of the compensable injury. This requires the court to assess what the worker would have received had legislation not limited or restricted his/her common law entitlements. All heads of damage must be included.
- **Factor X** – This is the third party's proportionate liability taking into account the proportionate responsibility of all other parties.
- **Factor C** – This is any amount the third party paid to a worker to settle common law entitlements.

Except in cases where the third party's proportionate liability is small, the formula will usually arrive at **a figure that is higher than VWA's payments to the worker.**

If there is a judgment in VWA's favour, the court will order an indemnity in its favour assessed using the formula. The VWA is then entitled to recover from a third party the amount of compensation it pays to a worker as and when it is paid, until the amount of the indemnity is exhausted.

In practice, VWA is open, in most cases, to resolving its entitlements on an 'all-in' basis. This generally involves making an educated assessment based on what the worker is likely to be paid by VWA over the life of the claim and, subject to the cap assessed under the formula, paying an amount to VWA to cover these risks. Resolution on these terms means insurers can then close their files.

RECENT DAMAGES AWARDS

Wotton + Kearney keeps detailed records of all reported general damages awards handed down in Victoria. What we have observed is that there continues to be an inflation of general damages awards, with relatively minor injuries that reach the injury threshold now assessing at above \$100,000, with back injuries often attracting damages awards over \$300,000.

We have also observed a rise in the general damages award over the years, ranging from an average award of about \$150,000 in 2015 to about \$270,000 in 2021. Recent decisions outlined above suggest that general damages continue to be generously assessed by comparison to other states.

Unlike some other jurisdictions, Victoria does not have any statutory guidance on how to assess general damages. The court is, however, entitled (indeed required) to consider previous decisions as a guide when awarding general damages. However, as the awards of damages increase, it will have a natural knock on effect to later judgments, as well as to the settlement expectations of plaintiff lawyers at mediation.

RECENT CASES AT A GLANCE

Case	Circumstances	Injuries	Total General Damages Awarded	
<i>Biggs v O'Connor</i> [2021] VSC 826 (Judge Keogh)	The plaintiff's husband was riding as a pillion passenger on a motorcycle when it lost control and collided with a fence, where he later died in hospital.	The plaintiff made a claim for psychiatric injury alleging that the rider's negligence caused her injuries. The court accepted that the plaintiff suffered a permanent psychological injury that resulted from the accident and her husband's death. The court accepted that the evidence showed improvements with her condition along with a positive prognosis. However, the court found that from the time she sustained her injuries, the plaintiff's daily living and work capacity was impacted and she was required to seek psychiatric treatment and take medication for her injuries.	GDs: \$275,000 Medical expenses: \$Nil	Gratuitous care: \$Nil Economic loss: \$380,000
<i>Ferla v Piazzanova Piazza Pty Ltd</i> [2021] VCC 1951 (Judge Parrish)	The plaintiff fell off his bike in an area owned and occupied by the defendant.	The plaintiff sustained two fractures to his arm, 4 fractured teeth and a left elbow injury. Plaintiff receiving no ongoing treatment for injuries.	GDs: \$100,000 Medical expenses: \$4,900	Gratuitous care: \$6,240 Economic loss: \$Nil
<i>Golowka v Cotton on Pty Ltd</i> [2021] VCC 1794 (Judge Pillay)	<p>The plaintiff worked as a picker in a warehouse.</p> <p>As part of her picker duties (amongst others) she was required to push a trolley, pick items of clothing, box them and unload them onto pallets.</p>	The plaintiff claimed that she sustained injuries to her left knee and left leg due to her work duties. The court found the plaintiff to be a "straightforward, honest witness" and accepted her evidence. The plaintiff's injuries were considered permanent and had restricted her significantly in her household and domestic tasks. She may also require a total knee replacement along with ongoing medication. These were to the court "very significant matters" and accepted the psychological impact on the plaintiff.	GDs: \$250,000 Medical expenses: \$Nil	Gratuitous care: \$Nil Economic loss: \$483,320
<i>Muller v Klosed Pty Ltd</i> [2021] VSC 360 (Judge Keogh)	The plaintiff, aged 65, was a truck driver and in the course of his employment a gate fell and struck him on the shoulder.	The plaintiff suffered a lower back injury. The plaintiff did not undergo spinal surgery, though required ongoing medication and treatment. The plaintiff's psychological history did not convince the court that it was relevant regarding the damages assessment as the plaintiff's unrelated psychological symptoms were modest and there was a very limited history of treatment. The court accepted that the plaintiff would continue to experience significant pain and disability into the future.	GDs: \$275,000 Medical expenses: \$Nil	Gratuitous care: \$Nil Economic loss: \$190,000
<i>Tregilgas v Victorian WorkCover Authority</i> [2021] VCC 1781 (Judge Misso)	The plaintiff was employed as a tyre fitter and over the course of his employment hurt his back.	The plaintiff suffered a lower back injury. The plaintiff had pre-existing lower back issues. The court accepted that his previous lower back condition was manageable and did not incapacitate his ability to function in a working and non-working context. The court found that he was in "intractable, unremitting pain", with the injury requiring a serious spinal surgery. The plaintiff was taking high doses of medication and had received extensive treatment. The plaintiff's daily living was impacted, with the court being satisfied his ability to function to be at a "low level".	GDs: \$450,000 Medical expenses: \$Nil	Gratuitous care: \$Nil Economic loss: \$735,637

<i>Ryan v Victorian WorkCover Authority</i> [2020] VCC 1476 (Judge Tsalamandris)	<p>The plaintiff, aged 53, was updating a GPS unit in a truck.</p> <p>Whilst he was re-fitting the dashboard he leaned across to place a screw in the dashboard and felt his right knee lock following with extreme pain.</p>	<p>The plaintiff sustained a right knee injury requiring three arthroscopic surgeries and a total knee replacement. The plaintiff also claimed he sustained a left knee injury as a consequence of overusing his left knee due to his right knee injury. Various doctors accepted that the left knee pain was due to overuse as a consequence of the work-related right knee injury. The court also accepted this. He was diagnosed with a psychiatric condition consequential to the pain associated from the physical injury. On various occasions he attempted suicide. The plaintiff required various treatment, use of mobility aids and medication. The plaintiff had a pre-existing right knee condition that previously required arthroscopic surgeries. The court was satisfied that if the work incident had not occurred, then the plaintiff would have experienced “occasional” right knee pain, though not with the “frequency and intensity” that he has as a result of the incident. The court accepted the work incident aggravated the condition and that the consequential symptoms impacted his enjoyment of life and ability to do recreational activities.</p>	<p>GDs: \$200,000</p> <p>Medical expenses: \$Nil</p>	<p>Gratuitous care: \$Nil</p> <p>Economic loss: \$Nil</p>
<i>Vlaming v Von Marburg</i> [2020] VSC 340 (Judicial Registrar Clayton)	<p>The plaintiff was injured after undergoing right ear surgery.</p>	<p>The plaintiff suffered loss of hearing, psychological injuries (including PTSD), along with facial nerve injuries as a result of surgery that was found to have been performed negligently.</p>	<p>GDs: \$280,000</p> <p>Medical expenses: \$55,718.80</p>	<p>Gratuitous care: \$Nil</p> <p>Economic loss: \$113,515</p>

Western Australia

Will Robinson (Partner) and Divij Vijayakumar (Senior Associate)

PROCEDURAL RULES

Personal injury damages in Western Australia are regulated by the *Civil Liability Act 2002* (WA) (**CLA**) and the *Workers' Compensation and Injury Management Act 1981* (WA) (**WCIM**).

GENERAL PRINCIPLES IN ASSESSING DAMAGES

The *fundamental principle* of compensation is that damages to be recovered are in monetary terms no more and no less than the plaintiff's actual loss.

The assessment of damages for personal injuries in an action for negligence is:

- not an exact science
- must be governed by practical common sense in the context of the facts of the particular case
- the District Court of WA has unlimited jurisdiction to hear all personal injury claims under section 50 of the *District Court of Western Australia Act 1969* (WA)
- there is no trial by jury in WA personal injury litigation. This favors defendants and insurers as it prevents a situation where a "rogue jury" may award exorbitant damages, and

- section 10A of the CLA allows WA Courts to refer to earlier decisions of that court or other courts for the purpose of establishing the appropriate award (codifying a judge's ability to look to all jurisdictions when assessing awards).

HEADS OF DAMAGE WILL TYPICALLY INCLUDE:

General damages / non-pecuniary loss

The plaintiff is entitled to be compensated for the condition that he or she has been left in as a result of the accident with a view to giving him fair compensation for the pain, inconvenience and loss of enjoyment which he has sustained;

Section 9 of the CLA imposes restrictions on these damages;

General damages covers pain and suffering; loss of amenities of life; loss of enjoyment of life; curtailment of expectation of life; and bodily or mental harm.

Restrictions and thresholds:

There is no cap on awards of general damages in WA, but there are thresholds that apply which are indexed annually in accordance with the consumer price index calculation.

The threshold amounts are specified in section 9 CLA and are applied as follows:

- Amount A is \$23,500
- Amount C is \$68,000

Section 9 of the CLA provides:

If the amount of non-pecuniary loss is assessed to be more than Amount C but less than the sum of Amount A and Amount C for the year in which the amount is assessed, damages for non-pecuniary loss are not to be awarded in an amount that is more than the excess of the amount assessed over the amount calculated as follows –

Amount A – (Amount assessed – Amount C)

Translation of section 9 of the CLA:

- where general damages are assessed at or below Amount A, no award will be made
- where the assessment falls between Amount A and Amount C, the amount assessed is reduced by Amount A, and
- where the assessment is more than Amount C, but not as much as the sum of Amount A and Amount C, the assessed damages must be reduced by the following amount.

Therefore:

Assessment of damage amount if	Amount awarded under CLA
If less than \$23,500	No award
If between \$23,500 – \$68,000	The plaintiff does not receive the first \$23,500
If between \$68,000 – \$91,500	The threshold applies on a sliding scale
If greater than \$91,500	The plaintiff receives full award

ECONOMIC LOSS

Economic loss is addressed in section 11 of the CLA and is an assessment of loss of capacity to earn (must be productive of financial loss), rather than a claim for loss of earnings. (i.e As a result of the accident, has the plaintiff been rendered less capable of earning income? The court looks at the plaintiff’s capacity for work beyond the particular employment in which he or she was engaged at the time of the accident).

It is calculated using figures net of income tax.

Under the CLA, the court is to disregard earnings to the extent that they would have accrued at a rate of more than three times the average weekly earnings at the date of the award. The average total full-time earnings of persons in WA are \$1,711.60 (as at November 2020).

Evidence to gather with respect to loss of earning capacity:

- details of pre accident employment and education;
- pre-accident and post-accident earnings; and

- post accident earning capacity, including the kind of work (after the accident), the plaintiff would be in a position to undertake; the likelihood that he or she would be able to obtain such work; and the remuneration which he or she might expect to derive from it.

A claim for **loss of superannuation** will normally follow a claim for loss of earning capacity. A discount is applied to superannuation calculations to allow for the tax advantages that would be accrued from the employers contributions, expenses in the fund – *Jongen v CSR Ltd & Anor* set out an appropriate discount as being 30% but has more recently been applied at 15%.

Past loss of earning capacity (including superannuation and interest)

Past economic loss is evidenced through tax returns, employer’s records and workers compensation records.

Future loss of earning capacity (including superannuation loss)

Future economic loss is the income loss the plaintiff will suffer by not being able to work because of the incident. It is calculated from the date of assessment, until the retirement age of the plaintiff.

Damages are calculated using multiplier tables.

Past and future gratuitous services

A plaintiff is entitled to claim an amount equivalent to the commercial cost of domestic and nursing services which had been provided in the past and would also be provided in the future by the family or friends of the injured plaintiff.

The starting point for the basis of the claim for damages (i.e. the need of the Plaintiff for those services).

These damages continue to feature in claims, even where elements seem difficult or unlikely to be made out and as a method by which plaintiff solicitors seek increased awards.

Section 12 of the CLA provides that a claim for gratuitous care depends on whether:

- the services would have been, or would be, provided even if the person had not suffered the injury – then there is no award;
- the claim is assessed at below Amount B – if so, there is no entitlement to an award. This amount is also indexed annually and is currently \$7,000;
- services are provided for more than 40 hours per week – the amount of the award is not to exceed the amount calculated on a weekly basis at the rate of the average weekly earnings (AWE) of all employees in WA for the relevant quarter; and
- services are provided for less than 40 hours per week – then the amount to be awarded is not to exceed the amount calculated on an hourly rate that is 1/40 of the AWE of all employees for the relevant quarter.

Thresholds and caps:

damages may be awarded for services provided by a member of the same household/ family.

no damages awarded if the court assesses the damages (past and future) at \$7,000 or less.

the value is assessed with regard to the average weekly total earnings of all employees in WA for the relevant quarter and the rate per hour is one 40th of the average weekly earnings, and

a claim per week cannot exceed 40 hours.

Special damages

Special damages are used to refer to past Medicare benefits, past private healthcare benefits and associated costs incurred by a plaintiff in relation to their past care.

This can include private expenses for painkillers, medical aids (such as crutches), and the costs of attending appointments (such as travel).

OTHER CONSIDERATIONS

Fox v Wood damages

Where a plaintiff has received workers compensation benefits upon which tax was paid and is required to repay the gross benefits from damages, the damages must be increased to allow for the tax paid.

The plaintiff’s loss, being the tax paid on the benefits received, is a natural and foreseeable consequence of the injuries: *Fox v Wood* (1981).

When making such claims, it is normally necessary to prove that the insurer does require repayment of the gross sum

Vicissitudes of life

A damages award for future losses has a 6% discount factor applied to it in line with Section 5 of the *Law Reform (Miscellaneous Provisions) Act 1941* (WA) which reflects the vicissitudes of life (i.e normal sickness, absences from employment) which would reduce the plaintiff’s position or income.

RECENT CASES AT A GLANCE

Case	Date	Plaintiff details	Cause of action	Injuries	General Damages Awarded	Total General Damages Awarded
<i>Essaiyd v Saint</i> [2021] WADC 61	18/06/2021	Male, 43	Occupiers liability	Hand injury – Plaintiff’s hand injured while working on a shipping vessel as a share fisherman.	\$20,000 (but not awarded as below threshold under s9 of the CLA)	\$23,595
<i>Lawrence v Province Leader of Oceania Province of Congregation of Christian Brothers</i> [2020] WADC 27	21/05/2020	Male, 77	Historical abuse	Psychiatric injury – Plaintiff suffered numerous forms of abuse (including sexual and physical) as an orphan from between the age of 8 and 16.	\$400,000	\$1,329,500
<i>Parkin v Amaca Pty Ltd</i> (formerly James Hardie & Coy Pty Ltd) [2020] WASC 306	15/07/2020	Female, 63	Asbestos diseases compensation	Asbestos – Plaintiff was exposed to asbestos-containing products whilst working with her Farther, who was constructing an extension to their home using asbestos cement sheets.	\$360,000	\$1,041,480
<i>Greenslade v Hiew</i> [2020] WADC 120	01/09/2020	Male, 47	Occupiers’ & landlord’s liability	Neck & psychiatric injury – Plaintiff sustained injury when ceiling of tenanted house fell on plaintiff’s head.	\$75,000	\$568,852
<i>Manowski v Sealanes</i> (1985) Pty Ltd [2019] WADC 90	04/07/2019	Male	Workplace injury	Head injury – plaintiff injured having been hit in the back of the head by a falling bulk head while in the back of a refrigerated trailer.	Nil	\$39,882
<i>Ciolpan v Swan Transit Services (South) Pty Ltd</i> [2020] WADC 95	14/10/2019	Male, 48	Workplace injury	Back and neck – Plaintiff was a bus driver who suffered injury as a result of driving over rough road conditions, causing the bus to jolt and the plaintiff’s seat to jog him up and down which caused him to feel pain in his back and neck.	\$130,000	\$1,073,255
<i>Watson v Gregory Spencer Ward t/as Ward’s Stock Transport</i> [2019] WADC 118	16/08/2019	Male, 55	Workplace injury	Shoulder injury – Plaintiff was a cattle truck driver who allegedly suffered injury to his back due to being attacked by a bull.	\$104,000	\$1,279,738.30
<i>Warn v Best Bar</i> [2018] WADC 17	02/02/2018	Male, 36	Workplace injury	Back – Plaintiff claims that he suffered injuries to his back due to the manual process of lifting heavy metal cuts from one machine to another.	\$135,000	\$1,389,300.12
<i>Hooker v Allied Pumps Pty Ltd</i> (No 2) [2018] WADC 129	12/10/2018	Male, 30s – 40s	Workplace injury	Neck, back, shoulders & psychological harm – Another employee switched on a personal gas detector behind the plaintiff. The alarm was triggered and startled the plaintiff.	\$135,000	\$1,976,364.40

LIMITATION PERIODS

The limitation period for personal injury claims is three years under section 14 of the *Limitation Act 2005* (**WA**).

For dust diseases (asbestos-related), s56 provides that the action accrues when the person has knowledge of relevant facts (i.e the diagnosis of the injury/ the significance of the injury and identity of the defendant).

For historical childhood sexual abuse claims, the time limitation has been removed entirely. Victims who had previously entered into settlement agreements resolving their claims are now able to proceed with a claim for further damages where a court determines it is 'just and reasonable' to do so.

CLAIMS INVOLVING INJURED WORKERS

The rights of a worker injured in the course of employment are governed by the *Workers Compensation & Injury Management Act 1981* (**WA**) (**WCIM**) and WorkCover WA. The WCIM (and its application) has become increasingly relevant with the rise in injured worker claims and contractual relationships between employers and other entities on the same sites. It provides for no-fault compensation entitlements to an injured worker, but, relevantly to insurers, limits the common law rights of injured workers, employers and third parties.

The standard limitation period for a worker's injury claim is three years.

When a worker is injured during their employment, they are generally entitled to no-fault compensation benefits under their employer's mandatory WorkCover insurance. These insurances are statutorily required and must comply with Schedule 1 of the WCIM.

A worker's entitlements under workers compensation typically includes weekly payments. A worker may also claim (a) 'no-fault' lump sum payments for their respective injuries (including where the injury is both serious and permanent), and (b) all reasonable medical and the like expenses.

A worker may bring a claim for common law damages against their employer by satisfying the requirements under s93K(4) of the WCIM as follows:

- if the worker elects to retain the right to seek the damages, and
- the Director of WorkCover WA registers the election, and
- court proceedings seeking damages are commenced after the Director provides written notice to the worker that the election is registered, and
- the Court is satisfied that the worker has established a whole person impairment (**WPI**) of greater than 15%.

Assessment of WPI of Worker

A worker has their injury assessed by an approved medical specialist (**AMS**) approved by WorkCover WA, who evaluates the injury using the WorkCover WA Guides for the Evaluation of Permanent Impairment and the American Medical Association's Guides to the Evaluation of Permanent Impairment.

If the worker's injuries are assessed at 15% WPI or more, the worker has eligibility to pursue common law damages. However, being assessed over 15% WPI does not make pursuing common law damages against the employer mandatory, and all the requirements under s93K(4) must be met.

Election by the Worker

Critically, the injured worker must elect to pursue their employer under s93K(4). Previously, workers were required to elect to pursue common law damages by the "termination date" (being 12 months from the date in which the worker made a claim for compensation). In light of the *Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020*, there is now no termination date, but workers are still required to register an election to pursue their employer at common law.

Workers' Rights Against a Third Party

The provisions of the WCIM do not apply to, or affect, the injured worker's rights to pursue a third party for damages. An injured worker is able to pursue any third party for any alleged liability for their workplace injury. Accordingly, where the injured worker has not satisfied s93K(4) (such as the minimum 15% WPI threshold) an injured worker will often look to obtain damages from a negligent third party who may only have a limited responsibility (e.g. an occupier).

We have seen an increasing number of claims where, despite the injured worker satisfying the 15% WPI threshold, the worker does not elect to pursue their employer. This results in the worker's common law rights against the employer being waived and subsequently, the rights of a negligent third party to pursue the employer for contribution under the WCIM.

Section 93K(8) – an important consideration in all injured worker claims

As outlined above, section 93K(4) of the WCIM regulates the injured worker's ability to pursue their employer.

Where s93K(4) is satisfied, there is still a limit placed on the employers' liability to the claim under s93K(5), where an employer's liability is capped if the injured worker's WPI is above 15% but less than 25% (known as a 'capped-claim').

The capped amount is indexed every financial year by WorkCover WA and is currently valued at \$502,279.

Critically, s93K(8) provides that the employer cannot be joined to a proceeding or be joined to contribute to the claim under the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* (**WA**) if:

- s93K(4) has not been satisfied – that is the injured worker has not met the threshold 15% WPI and elected to pursue his employer, or
- s93K(5) has been satisfied – that is that the employer has already paid the injured worker the statutory limit (including weekly compensation payments).

The practical effect of s93K(8) is that an employer often cannot be joined to proceedings by a third party, where an injured worker has not elected to pursue their employer or satisfied the minimum WPI.

This can result in unjust outcomes where a third party (who may have limited responsibility for a claim) cannot join or pursue the employer (who has the lion's share of liability) due to the injured worker's decision to not elect to pursue their employer. Similarly, even where the employer is a party to the proceedings, in the case of a capped claim the third party could be responsible for bearing a disproportionately high share of the damages if the capped amount has been exhausted.

This means that a third party who has limited responsibility for a claim may end up paying 100% of the claim. This nuance is also as a result of Part 1F of the CLA not applying to personal injury claims – i.e. the proportionate liability regime cannot be used to limit the third party's liability exposure to a 'proportion' of their liability only.

The application of s93K by the WA Courts is largely untested. Cases typically relate to the procedural requirements to satisfy its operation, such as attaining the correct WPI to sue an employer (e.g. *Gable v Steel Cap Recruitment Pty Ltd* (No 2) [2017] WADC 10) or an employee's election process, such as filing the correct forms (e.g. *Mogensen v Premium Grain Handlers Pty Ltd* [2008] WASC 145).

Section 93 – Recovery actions by workers' compensation insurers

The increase in injured worker claims in WA has led to an increase in recovery actions by workers compensation insurers. Under the WCIM, the employer of an injured worker has a statutory right to be indemnified by a negligent third party for any compensation that has been paid, or may be paid, to an injured worker – this takes the form of a subrogated recovery claim controlled by the employer's workers' compensation insurer.

The relevant workers' compensation insurer pursues its statutory rights of recovery from third parties (i.e. non-employer defendants) by way of a recovery action for indemnity under section 93 of the WCIM. This is often called a workers' compensation recovery.

Section 93(1) covers compensable injuries that were caused in circumstances that create a legal liability in some person other than the employer and where neither the employer nor any person for whose negligence the employer is legally responsible is negligent. In that case, the employer is entitled to be indemnified by the person whose negligence caused the injury to the worker to the full extent of the employer's liability to pay compensation under this Act, whether or not the defendant has discharged his liability to pay damages to the worker by judgment or by settlement or otherwise.

An allowance is made for a reduction in the amount owing by a negligent third party to the extent of the worker or employer's own negligence under s93(2).

Recovery claims are often made against **occupiers of the premises** where the workplace injury occurred (such as the mine operator or site owner); **host employers** due to the increased use of labour-hire services in the mining and construction industry; **manufacturers and suppliers** of relevant equipment which may have caused or contributed to a workplace injury; and **other contractors/sub-contractors** at the site who have some involvement in the workplace injury (such as spotters or site supervisors).

Section 93 provides statutorily-protected cause of action for an employer/workers' compensation insurer to recover sums it has paid to an injured employee from any negligent third party. WA Court decisions have protected this right and ruled against parties trying to circumvent this provision.

Some workers compensation insurers are prepared to accept reduced sums to satisfy a recovery, particularly where there is limited liability on behalf of the negligent third party.

Limitation Period for recovery actions

The limitation period for a workers' compensation recovery action is 6 years from the date each payment of compensation is made, which means the workers' compensation insurer may be able to bring proceedings against a third party many years after the worker's injury has happened or resolved.

To circumvent this issue, an injured worker's lawyer typically notifies or "invites" the workers' compensation insurer to attend the settlement conference in the common law proceeding so that both claims can be resolved at the same time.

Principal's Indemnity Extension

A nuance of the WA jurisdiction is the increasing prevalence of a 'principal's indemnity extension' within a workers compensation policy, particularly in the mining, oil & gas and construction industries.

A principal's indemnity extension is usually an endorsement or extension on the employers' workers compensation policy that extends insurance cover to the named principal (usually the operator or head contractor) for any claim made against the principal arising out of an injury to an employee of the subject employer (usually a sub-contractor/contractor).

In practice, what a principal's indemnity extension in a worker's compensation policy effectively does is:

- provide a form of public liability cover for the named principal, in that the workers compensation policy extension will respond to the common law claim from the injured employee (as opposed to the principal's public liability policy); and
- prevent the employer or the workers compensation insurer from bringing a WorkCover recovery as the principal is insured for such a claim under the same workers compensation policy. This results in a circuitous action (where the insurer would be recovering from themselves).

It is therefore important to review the relevant contractual materials between the principal and contractor/employer of the injured worker in order to determine whether a principal's indemnity extension is available.

Below are the current indexed tables under the CLA and the CCA (*Civil Liability Act and Consumer and Competition Act*).

(Civil Liability Act) “most extreme case”			(Consumer and Competition Act) “most extreme case”		
%	% of maximum	Award	%	% of maximum	Award
0-14%	Nil	Nil	0-14%	Nil	Nil
15%	1%	\$7,000	15%	1%	\$3,590
16%	1.5%	\$10,500	16%	1.5%	\$5,390
17%	2%	\$14,000	17%	2%	\$7,180
18%	2.5%	\$17,500	18%	2.5%	\$8,980
19%	3%	\$21,000	19%	3%	\$10,770
20%	3.5%	\$24,500	20%	3.5%	\$12,570
21%	4%	\$27,500	21%	4%	\$14,360
22%	4.5%	\$31,000	22%	4.5%	\$16,160
23%	5%	\$34,500	23%	5%	\$17,950
24%	5.5%	\$38,000	24%	5.5%	\$19,750
25%	6.5%	\$45,000	25%	6.5%	\$23,340
26%	8%	\$55,500	26%	8%	\$28,730
27%	10%	\$69,500	27%	10%	\$35,910
28%	14%	\$97,000	28%	14%	\$50,270
29%	18%	\$125,000	29%	18%	\$64,640
30%	23%	\$159,500	30%	23%	\$82,590
31%	26%	\$180,500	31%	26%	\$93,360
32%	30%	\$208,000	32%	30%	\$107,730
33%	33%	\$229,000	33%	33%	\$118,500
34%	34%	\$236,000	34%	34%	\$122,090
35%	35%	\$242,500	35%	35%	\$125,680
36%	36%	\$249,500	36%	36%	\$129,270
37%	37%	\$256,500	37%	37%	\$132,860
38%	38%	\$263,500	38%	38%	\$136,450
39%	39%	\$270,500	39%	39%	\$140,050
40%	40%	\$277,500	40%	40%	\$143,640
41%	41%	\$284,500	41%	41%	\$147,230
42%	42%	\$291,500	42%	42%	\$150,820
43%	43%	\$298,000	43%	43%	\$154,410
44%	44%	\$305,000	44%	44%	\$158,000
45%	45%	\$312,000	45%	45%	\$161,590
46%	46%	\$319,000	46%	46%	\$165,180
47%	47%	\$326,000	47%	47%	\$168,770
48%	48%	\$333,000	48%	48%	\$172,360
49%	49%	\$340,000	49%	49%	\$175,950
50%	50%	\$347,000	50%	50%	\$179,550
51%	51%	\$353,500	51%	51%	\$183,140
52%	52%	\$360,500	52%	52%	\$186,730
53%	53%	\$367,500	53%	53%	\$190,320
54%	54%	\$374,500	54%	54%	\$193,910
55%	55%	\$381,500	55%	55%	\$197,500
56%	56%	\$388,500	56%	56%	\$201,090
57%	57%	\$395,500	57%	57%	\$204,680
58%	58%	\$402,000	58%	58%	\$208,270

(Civil Liability Act) “most extreme case”			(Consumer and Competition Act) “most extreme case”		
%	% of maximum	Award	%	% of maximum	Award
59%	59%	\$409,000	59%	59%	\$211,860
60%	60%	\$416,000	60%	60%	\$215,450
61%	61%	\$423,000	61%	61%	\$219,040
62%	62%	\$430,000	62%	62%	\$222,640
63%	63%	\$437,000	63%	63%	\$226,230
64%	64%	\$444,000	64%	64%	\$229,820
65%	65%	\$451,000	65%	65%	\$233,410
66%	66%	\$457,000	66%	66%	\$237,000
67%	67%	\$464,500	67%	67%	\$240,590
68%	68%	\$471,500	68%	68%	\$244,180
69%	69%	\$478,500	69%	69%	\$247,770
70%	70%	\$485,500	70%	70%	\$251,360
71%	71%	\$492,500	71%	71%	\$254,950
72%	72%	\$499,500	72%	72%	\$258,540
73%	73%	\$506,500	73%	73%	\$262,140
74%	74%	\$513,000	74%	74%	\$265,730
75%	75%	\$520,000	75%	75%	\$269,320
76%	76%	\$527,000	76%	76%	\$272,910
77%	77%	\$534,000	77%	77%	\$276,500
78%	78%	\$541,000	78%	78%	\$280,090
79%	79%	\$548,000	79%	79%	\$283,680
80%	80%	\$555,000	80%	80%	\$287,270
81%	81%	\$561,500	81%	81%	\$290,860
82%	82%	\$568,500	82%	82%	\$294,450
83%	83%	\$575,500	83%	83%	\$298,040
84%	84%	\$582,500	84%	84%	\$301,640
85%	85%	\$589,500	85%	85%	\$305,230
86%	86%	\$596,500	86%	86%	\$308,820
87%	87%	\$603,500	87%	87%	\$312,410
88%	88%	\$610,500	88%	88%	\$316,000
89%	89%	\$617,000	89%	89%	\$319,590
90%	90%	\$624,000	90%	90%	\$323,180
91%	91%	\$631,000	91%	91%	\$326,770
92%	92%	\$638,000	92%	92%	\$330,360
93%	93%	\$645,000	93%	93%	\$333,950
94%	94%	\$652,000	94%	94%	\$337,540
95%	95%	\$659,000	95%	95%	\$341,140
96%	96%	\$666,000	96%	96%	\$344,730
97%	97%	\$672,500	97%	97%	\$348,320
98%	98%	\$679,500	98%	98%	\$351,910
99%	99%	\$686,500	99%	99%	\$355,500
100%	100%	\$693,500	100%	100%	\$359,090
(i.e. “most extreme case”)			(i.e. “most extreme case”)		

ISV	Injury between 1 Jul 15 – 30 Jun 17	Injury between 1 Jul 17 – 30 Jun 18	Injury between 1 Jul 18 – 30 Jun 19	Injury between 1 Jul 19 – 30 Jun 20	Injury between 1 Jul 20 – 30 Jun 21	Injury between 1 Jul 21 - 30 June 22	Injury after 1 Jul 22
1	1,440	1,480	1,530	1580	1,620	1,630	1690
2	2,880	2,960	3,060	3,160	3,240	3,260	3380
3	4,320	4,440	4,590	47,40	4,860	4,890	5070
4	5,760	5,920	6,120	6,320	6,480	6,520	6760
5	7,200	7,400	7,650	7,900	8,100	8,150	8450
6	8,910	9,150	9,450	9,750	9,990	10,050	10420
7	10,620	10,900	11,250	11,600	11,880	11,950	12390
8	12,330	12,650	13,050	13,450	13,770	13,850	14360
9	14,040	14,400	14,850	15,300	15,660	15,750	16330
10	15,750	16,150	16,650	17,150	17,550	17,650	18300
11	17,760	18,210	18,770	19,330	19,780	19,890	20620
12	19,770	20,270	20,890	21,510	22,010	22,130	22940
13	21,780	22,330	23,010	23,690	24,240	24,370	25260
14	23,790	24,390	25,130	25,870	26,470	26,610	27580
15	25,800	26,450	27,250	28,050	28,700	28,850	29900
16	28,090	28,800	29,670	30,540	31,250	31,410	32550
17	30,380	31,150	32,090	33,030	33,80	33,970	35200
18	32,670	33,500	34,510	35,520	36,350	36,530	37850
19	34,960	35,850	36,930	38,010	38,900	39,090	40500
20	37,250	38,200	39,350	40,500	41,450	41,650	43150
21	39,820	40,830	42,060	43,290	44,300	44,510	46110
22	42,390	43,460	44,770	46,080	47,150	47,370	49070
23	44,960	46,090	47,480	48,870	50,000	50,230	52030
24	47,530	48,720	50,190	51,660	52,850	53,090	54990
25	50,100	51,350	52,900	54,450	55,700	55,950	57950
26	52,970	54,290	55,930	57,570	58,890	59,150	61260
27	55,840	57,230	58,960	60,690	62,080	62,350	64570
28	58,710	60,170	61,990	63,810	65,270	65,550	67880
29	61,580	63,110	65,020	66,930	68,460	68,750	71190
30	64,450	66,050	68,050	70,050	71,650	71,950	74500
31	67,610	69,290	71,390	73,490	75,170	75,480	78150
32	70,770	72,530	74,730	76,930	78,690	79,010	81800
33	73,930	75,770	78,070	80,370	82,210	82,540	85450
34	77,090	79,010	81,410	83,810	85,730	86,070	89100
35	80,250	82,250	84,750	87,250	89,250	89,600	92750
36	83,700	85,780	88,390	91,000	93,080	93,440	96720
37	87,150	89,310	92,030	94,750	96,910	97,280	100690
38	90,600	92,840	95,670	98,500	100,740	101,120	104660
39	94,050	96,370	99,310	102,250	104,570	104,960	108630
40	97,500	99,900	102,950	106,000	108,400	108,800	112600
41	101,200	103,690	106,860	110,030	112,520	112,940	116880
42	104,900	107,480	110,770	114,060	116,640	117,080	121160
43	108,600	111,270	114,680	118,090	120,760	121,220	125440
44	112,300	115,060	118,590	122,120	124,880	125,360	129720
45	116,000	118,850	122,500	126,150	129,000	129,500	134000
46	119,700	122,640	126,410	130,180	133,120	133,640	138280
47	123,400	126,430	130,320	134,210	137,240	137,780	142560
48	127,100	130,220	134,230	138,240	141,360	141,920	146840
49	130,800	134,010	138,140	142,270	145,480	146,060	151120
50	134,500	137,800	142,050	146,300	149,600	150,200	155400

ISV	Injury between 1 Jul 15 – 30 Jun 17	Injury between 1 Jul 17 – 30 Jun 18	Injury between 1 Jul 18 – 30 Jun 19	Injury between 1 Jul 19 – 30 Jun 20	Injury between 1 Jul 20 – 30 Jun 21	Injury between 1 Jul 21 - 30 June 22	Injury after 1 Jul 22
51	138,450	141,850	146,220	150,600	154,000	154,620	159970
52	142,400	145,900	150,390	154,900	158,400	159,040	164540
53	146,350	149,950	154,560	159,200	162,800	163,460	169110
54	150,300	154,000	158,730	163,500	167,200	167,880	173680
55	154,250	158,050	162,900	167,800	171,600	172,300	178250
56	158,200	162,100	167,070	172,100	176,000	176,720	182820
57	162,150	166,150	171,240	176,400	180,400	181,140	187390
58	166,100	170,200	175,410	180,700	184,800	185,560	191960
59	170,050	174,250	179,580	185,000	189,200	189,980	196530
60	174,000	178,300	183,750	189,300	193,600	194,400	201100
61	178,210	182,610	188,190	193,870	198,270	199,090	205950
62	182,420	186,920	192,630	198,440	202,940	203,780	210800
63	186,630	191,230	197,070	203,010	207,610	208,470	215650
64	190,840	195,540	201,510	207,580	212,280	213,160	220500
65	195,050	199,850	205,950	212,150	216,950	217,850	225350
66	199,260	204,160	210,390	216,720	221,620	222,540	230200
67	203,470	208,470	214,830	221,290	226,290	227,230	235050
68	207,680	212,780	219,270	225,860	230,960	231,920	239900
69	211,890	217,090	223,710	230,430	235,630	236,610	244750
70	216,100	221,400	228,150	235,000	240,300	241,300	249600
71	220,590	226,000	232,890	239,880	245,290	246,310	254780
72	225,080	230,600	237,630	244,760	250,280	251,320	259960
73	229,570	235,200	242,370	249,640	255,270	256,330	265140
74	234,060	239,800	247,110	254,520	260,260	261,340	270320
75	238,550	244,400	251,850	259,400	265,250	266,350	275500
76	243,040	249,000	256,590	264,280	270,240	271,360	280680
77	247,530	253,600	261,330	269,160	275,230	276,370	285860
78	252,020	258,200	266,070	274,040	280,220	281,380	291040
79	256,510	262,800	270,810	278,920	285,210	286,390	296220
80	261,000	267,400	275,550	283,800	290,200	291,400	301400
81	265,740	272,260	280,560	288,960	295,480	296,700	306880
82	270,480	277,120	285,570	294,120	300,760	302,000	312360
83	275,220	281,980	290,580	299,280	306,040	307,300	317840
84	279,960	286,840	295,590	304,440	311,320	312,600	323320
85	284,700	291,700	300,600	309,600	316,600	317,900	328800
86	289,440	296,560	305,610	314,760	321,880	323,200	334280
87	294,180	301,420	310,620	319,920	327,160	328,500	339760
88	298,920	306,280	315,630	325,080	332,440	333,800	345240
89	303,660	311,140	320,640	330,240	337,720	339,100	350720
90	308,400	316,000	325,650	335,400	343,000	344,400	356200
91	313,410	321,130	330,940	340,850	348,570	349,990	361980
92	318,420	326,260	336,230	346,300	354,140	355,580	367760
93	323,430	331,390	341,520	351,750	359,710	361,170	373540
94	328,440	336,520	346,810	357,200	365,280	366,760	379320
95	333,450	341,650	352,100	362,650	370,850	372,350	385100
96	338,460	346,780	357,390	368,100	376,420	377,940	390880
97	343,470	351,910	362,680	373,550	381,990	383,530	396660
98	348,480	357,040	367,970	379,000	387,560	389,120	402440
99	353,490	362,170	373,260	384,450	393,130	394,710	408220
100	358,500	367,300	378,550	389,900	398,700	400,300	414000

Australian General Liability contacts

NEW SOUTH WALES



Charles Simon

General Liability Practice Leader (Sydney)

T +61 2 8273 9911
charles.simon@wottonkearney.com.au



Patrick Thompson

Partner (Sydney)

T +61 2 8273 9820
patrick.thompson@wottonkearney.com.au



Greg Carruthers-Smith

Partner (Sydney)

T +61 2 8273 9965
greg.carruthers-smith@wottonkearney.com.au



Meisha Tjong

Partner (Sydney)

T +61 2 8273 9936
meisha.tjong@wottonkearney.com.au



James Clohesy

Partner (Sydney)

T +61 2 9064 1816
james.clohesy@wottonkearney.com.au



Stan Tsaridis

Partner (Sydney)

T +61 2 8273 9810
stan.tsaridis@wottonkearney.com.au



Belinda Henningham

Partner (Sydney)

T +61 2 8273 9913
belinda.henningham@wottonkearney.com.au



Angela Winkler

Partner (Sydney)

T + 61 2 8273 9983
angela.winkler@wottonkearney.com.au



Sean O'Connor

Partner (Sydney)

T +61 2 8273 9826
sean.oconnor@wottonkearney.com.au



Lesley Woodmore

Partner (Sydney)

T +61 2 8273 9934
lesley.woodmore@wottonkearney.com.au

VICTORIA



Andrew Seiter

Partner (Melbourne)

T +61 3 9604 7906
andrew.seiter@wottonkearney.com.au



Aisha Lala

Partner (Melbourne)

T +61 3 9604 7916
aisha.lala@wottonkearney.com.au



Jonathan Maher

Partner (Adelaide/Melbourne)

T +61 3 9604 7919
jonathan.maher@wottonkearney.com.au



Hope Saloustros

Partner (Melbourne)

T +61 3 9604 7908
hope.saloustros@wottonkearney.com.au



Robin Shute

Partner (Melbourne)

T +61 3 9604 7905
robin.shute@wottonkearney.com.au



Chantal Van Grieken

Partner (Melbourne)

T +61 3 9604 7900
chantal.vangrieken@wottonkearney.com.au



Paul Spezza

Partner (Brisbane)

T +61 7 3236 8701
paul.spezza@wottonkearney.com.au



Scott Macoun

Partner (Brisbane)

T +61 7 3236 8713
scott.macoun@wottonkearney.com.au



Cassandra Wills

Partner (Brisbane)

T +61 7 3236 8717
cassandra.wills@wottonkearney.com.au

WESTERN AUSTRALIA



William Robinson

Partner (Perth)

T +61 8 9222 6909
william.robinson@wottonkearney.com.au



Ken Grunder

Partner (Perth)

T +61 8 9222 6967
ken.grunder@wottonkearney.com.au

QUEENSLAND

CANBERRA



Catherine Power

Partner (Canberra)

T +61 2 5114 2302
catherine.power@wottonkearney.com.au

SOUTH AUSTRALIA



Cheryl Phillips

Partner (Adelaide)

T +61 8 8473 8008
cheryl.phillips@wottonkearney.com.au

Australian Offices

Adelaide

Level 1, 25 Grenfell Street
Adelaide SA 5000

T+61 8 8473 8000

Brisbane

Level 23, 111 Eagle Street
Brisbane QLD 4000

T+61 7 3236 8700

Canberra

Canberra ACT 2601

T+61 2 5114 2300

Melbourne

Level 15, 600 Bourke Street
Melbourne VIC 3000

T+61 3 9604 7900

Perth

Level 49, 108 St Georges Terrace
Perth WA 6000

T+61 8 9222 6900

Sydney

Level 26, 85 Castlereagh Street
Sydney NSW 2000

T+ 61 2 8273 9900

New Zealand Offices

Auckland

Level 18, Crombie Lockwood Tower
191 Queen Street, Auckland 1010

T+64 9 377 1854

Wellington

Level 13, Harbour Tower
2 Hunter Street, Wellington 6011

T+64 4 499 5589

www.wottonkearney.com.au

© Wotton + Kearney 2023

This publication is intended to provide commentary and general information. It should not be relied upon as legal advice. Formal legal advice should be sought in particular transactions or on matters of interest arising from this publication. Persons listed may not be admitted in all states and territories.

Wotton + Kearney Pty Ltd, ABN 94 632 932 131, is an incorporated legal practice. Registered office at 85 Castlereagh St, Sydney, NSW 2000. Wotton + Kearney, company no 3179310. Regulated by the New Zealand Law Society. For our ILP operating in South Australia, liability is limited by a scheme approved under Professional Standards Legislation.

wotton
kearney

A founding member of **LEGALIGN**
GLOBAL

