

## SLIP AND FALL / PUBLIC LIABILITY GUIDE

If you have been injured because of someone else's fault, you may have a civil action in negligence against that person who caused the accident

### **The Personal Injuries Proceedings Act 2002 applies to slip and fall / public liability claims.**

**For the injured party it provides access to common law, that is, the injured person has a right to approach a law court to seek monetary compensation from the person/entity 'at fault' for the personal injury and other related losses.**

As a fault based scheme it requires proof of liability, i.e. the injured party must be able to establish negligence against the person/entity they believe is at fault.

At McNamara and Associates we have a REAL approach to personal injury claims. As a firm that has been around for more than 80 years we are:-

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#### **1. Reliable**

As a local law firm with families and connections to the Ipswich region, we place a high value on offering high quality legal help to our clients, our reputation depends upon it!

#### **2. Experienced**

When it comes to effectively and efficiently resolving your legal problem, experience matters! With over 80 years of experience working with the people of the Ipswich and Lockyer Valley regions of Queensland, we get you!

#### **3. Approachable**

We've been around long enough to know that for many people legal problems are both difficult and stressful. What we bring to the table is not only experienced and dedicated legal help, but an approach that our clients often remark as "refreshing." In our firm, being "**approachable**" is a core value that we always aspire to live up to.

#### **4. Local**

We've been helping the people of Ipswich and Lockyer Valley regions for over 80 years. Today we are one of the largest law firms in the local area with a deep-seated commitment to giving back.

If an injury results in the loss of capacity, the injured person may have lost the ability to prepare a will or enduring power of attorney. Compensation payments may also effect the injured persons wishes in a will that had already been prepared.

We recommend that if you, or a family member have been involved in an accident, you should seek advice about how the accident might affect your estate from one of McNamara and Associates estate lawyers.

McNamara and Associates understand that the financial strains that result from personal injuries can place pressure on relationships. If your relationship has deteriorated because of an injury, you should seek advice from one of McNamara and Associates family.

## Can you make a claim

**Public liability covers many different circumstances. Some of these include:-**

- > Falls down steps
- > Injuries in rental properties
- > Accidents at a work site if you are a contractor
- > Dog attacks
- > Schoolyard and playground accidents
- > Sporting accidents if the grounds are poorly maintained
- > Slips and falls in shopping centres and supermarkets
- > Police brutality and other assaults
- > Accidents on private or public property
- > Injuries by defective products

It is also critical that you consider that you consider if at the time of the accident you:

- a.** Were working; or
- b.** Travelling to or from work; or
- c.** Have, or have had a workers' compensation claim for this injury.

In any of these cases you may have other rights which may be lost if you do not take steps within extremely short time limits.

In some cases your may be able to apply for income protection or Total and Permanent Disability (TPD) Insurance, workers compensation benefits, or make a claim for a motor vehicle accident.

## What can you claim for

**If you settle your claim or a Court makes an award in your favour the money you receive is referred to as “damages”.**

**Damages are broken down into different categories:-**

- 1.** General Damages (pain and suffering)
- 2.** Special Damages (expenses)
- 3.** Past Economic Loss (lost wages)
- 4.** Future Economic Loss (loss of future earning capacity)
- 5.** Future Special Damages

You should keep a record of all the expense you have incurred because of the injury; i.e. medication, Doctor bills, kilometers travelled to Doctor appointments, expenses of any modifications to the home and time off work are just some of the examples of the type of expense you should record.

You may receive your damages as a single payment (after deduction of the refunds outlined above and your legal fees and outlays). This is usually referred to as a lump sum settlement. It is by far the most common way to receive your damages.

Alternatively, you may choose to negotiate a structured settlement. A structured settlement occurs where there is an agreement provided for the payment of all or part of your damages in the form of periodic payments funded by an annuity or other agreed means. A structured settlement may be possible but you are strongly advised to obtain independent financial advice about the effect of a structured settlement as compared to the receipt of lump sum damages.

## How do you claim

**The first step in bringing your claim is to issue the Notice of Claim Form.**

**It is very important that all details on this form are correct. You must list all injuries in your Notice of Claim Form and subsequent documents in order for you to be fully compensated for your loss and damage.**

This form needs to be sent to the Respondent to your claim within nine months of the injury occurring, or within one month after instructing a solicitor to act on your behalf. If this is not done you will need to provide an explanation for the delay. How you fill out the form can significantly affect both the amount of compensation you receive and the way the Respondent treat you.

**McNamara and Associates can assist you in completing the Notice of Claim Form.**

## What happens after you lodge a claim

**Once you serve your Notice of Claim form, your claim will have formally begun.**

**The Respondent will then have one month to respond to tell you whether:**

- a.** It agrees that it is a proper respondent to the claim; and
- b.** It agrees that the Notice of Claim Form contains all of the required information.

**Once you serve your Notice of Claim form the Respondent has the right to:**

- a.** Use the authority that you sign (as part of the Notice of Claim Form) to obtain documents from your current and past doctors, the hospital that you attended for treatment, government agencies including the Police and Centrelink and your current and past employers. If you indicated in the Notice of Claim Form that you have had previous significant injuries;
- b.** Appoint investigators to investigate the factual basis of your claim. These investigators might take statements from witnesses or conduct video surveillance of you. Surveillance can extend to internet and social media checks. Please advise if you have been involved in any prior proceedings and also if you are active on any forms of social media like Facebook as surveillance inconsistent with your claim may affect claim outcome;
- c.** Require you to provide information regarding the circumstances of the accident and anything to do with the quantum of your loss and damage. The insurer can require you to provide this information in a statutory declaration whereby you swear that the information contained in that declaration is correct.

**Not all of these things will apply to your claim. McNamara and Associates can provide you with advice and assistance in relation to any issues that do arise.**

## How long will it take

**The following is a basic timeline of the likely progress of your claim. This is a guide**

STEP	TIME
Serve Part 1 Notice of Claim Form	1 month from date of first instructing a Solicitor to act for you, or 9 months after your injury
Respondent confirms that it is a proper respondent and confirms compliance of claim form	1 month after step 1
Serve Part 2 Notice of Claim	2 months after step 2
Respondent's liability response	6 months after step 2
Prepare Statement of Loss and Damage	9-12 months after step 1
Medical examinations	6-12 months after step 1
Respondent's medical examinations	6-12 months after step 1
Compulsory conference	12-18 months after step 1
Begin court proceedings if necessary	Within 60 days after step 8

## What happens if the Respondent denies fault

**To succeed in a claim, you must show that the accident and the injuries you sustained were caused by the Respondent's negligence. That is, you suffered injury as a result of that person breaching their duty of care towards you.**

**This means collecting evidence. To start with photographs should be taken of the site where the injury occurred.**

Next, statements should be taken from anyone that witnessed the injury, including the injured person preparing a statement themselves. Some injury claims could take years to resolve, so a simultaneous record of what the injured person recalls of the accident is very important. These documents will be useful at some time down the track to prove the claim.

**Sometimes this may not be enough to convince the Respondent that they are at fault. McNamara and Associates can investigate fault for you.**

## What are the time limits

**There are timeframes for lodgement of your Notice of Claim under the legislations and there are two parts to your Notice of Claim.**

**A Part 1 Notice of Claim must be given to the party you believe is at fault (Respondent) within the period ending on the earlier of:**

- a.** nine months after the incident or, if no immediate symptoms, when first appearance of symptoms become apparent; or
- b.** one month after instructing a solicitor to act.

Your claim could be rejected if you lodge outside the timeframes. Early lodgement of your claim will assist in early access to treatment and rehabilitation if required. Part 2 of your Notice of Claim must be given to the person/entity to whom your Part 1 was given within two (2) months from when notification or presumption of compliance with the relevant sections of the Act is given.

**Regardless of what steps are taken in the meantime, it is essential that court proceedings are started within three years of your injury.**

**We strongly recommend that you urgently seek advice on applicable limitation dates. Generally speaking after this date you will not be able to bring an action for damages in relation to this accident, however, you should take legal advice in this regard.**

## Is there anything else you should know

**If your injuries have any impact on or are affected by your employment (such as bullying, demotion or dismissal), you may also wish to seek advice on whether these circumstance give rise to other rights. Strict time limits may apply and you should therefore raise any concerns and seek advice as soon as possible.**

After you serve your claim the Respondent has the right to appoint investigators to investigate the factual basis of your claim. These investigators might take statements from witnesses or conduct video surveillance of you. Surveillance can extend to internet and social media checks. It has become common for Respondents to perform full reviews of a claimant's social media profile, whether it be Facebook, Twitter, Instagram, LinkedIn, Snapchat, YouTube or any other website.

We strongly advise that you bear in mind that the Respondent to your claim may investigate your social media profiles before posting comments, pictures or videos. Even if your profile is closed to the public, the Respondent may obtain an Order from the Court for you to disclose the entire content of your social media profile.

The Queensland Government has introduced legislation designed to protect Queenslanders' personal, private information and stamping out unsolicited scam calls.

'Claim farming', as it is known in the legal industry, involves anonymous persons contacting members of the public, from local or overseas call-centres or via email or social media, to ask whether they or a family member have been involved in a motor vehicle accident, work injury or slip and fall. Claim farmers rely on different tactics to create an impression of credibility, such as suggesting they are acting on behalf of an official body, like the Motor Accident Insurance Commission (Commission), Workers' Compensation Regulator or other government agencies or insurers.

Claim farmers induce and harass individuals to make a claim under the statutory insurance scheme (scheme), often with the promise of quick and easy compensation, and may even offer to coordinate medical treatment. Claim farmers then sell individuals' personal information obtained through the contact for a fee (either directly or through an intermediary) to a legal practitioner or other claims management service provider who then handles the claim under the scheme.

To stop this practice, there are now a number of steps to be taken in a claim to remove the financial incentive for persons to engage in claim farming while at the same time ban claim farmers from approaching or contacting members of the public to solicit or induce them to make a claim under the scheme. The most common change you will come across in a claim is the requirement to sign a certificate confirming that you have not been approached by a person who may be a claim farmer, and you are not aware of your lawyer having given a fee, gift or benefit to someone for your referral to the lawyer.