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Hope After Hurt: A Legal Journey

JCU Law Seminar Series

Presented by Matthew Wicks
Associate



Acknowledgment of Country



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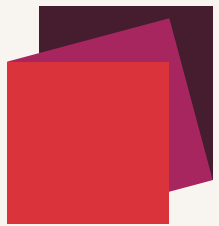
- **Who are Maurice Blackburn?**
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- **Why practice in personal injuries?**
- **Summary of the most common compensation schemes**
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We are over 100 years old...

Since our foundation by Maurice Blackburn in 1919, we have proudly built our business believing that we can make a genuine difference in the lives of those who need our help. As Australia's leading social justice law firm, we believe that the law should serve everyone, not just those who can afford it.

Our commitment is to the common worker. We exist to fight for their rights and extend access to justice to all.



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Key Cases

From the outset, Maurice Blackburn championed for civil liberties.
Some of our key cases include:

1947

ACTU 40-hour working week

A significant victory for working people

1966

Equality for Aboriginal workers

Fought for wage equality and award conditions

1972

Equal pay for women

Fought for women's rights in the workplace

1998

MUA waterfront dispute

Prevented the mass sacking of union employees

Queensland offices

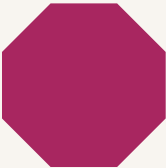
- Permanent offices
- Visiting offices



Our Services



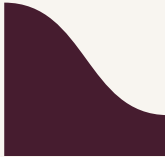
Work-related injuries



Road accident injuries



Superannuation insurance claims



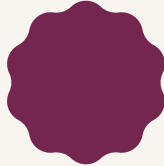
Public liability and faulty product claims



Asbestos, dust and melanoma disease claims



Medical negligence claims



Wills and wills disputes



Employment and industrial law matters



Financial advice disputes



Class actions



Social justice cases



Abuse law

About Me – My Legal Career



Key Career Learnings

- Your studies are important, but are not the only important thing to focus on
- Employers are looking for experience. You don't learn how to be a lawyer at law school, that happens on the job.
- Have fun and continue to do the things you love. Our work can be stressful, you need to do keep doing things that make you happy.
- Your network is valuable. These are the people that may one day offer you a job when you need it or send you work in the future.

Why Practice Personal Injuries Law?

- It is work that is meaningful
- Your clients usually come to you at one of the worst moments of their life and your job is to navigate through that with them
- The outcomes you achieve can be life changing and are not just financial
- You can still wear a suit and mix with corporates
- The claims require expertise in multiple legislative schemes and can be legally challenging

Myth: Ambulance chasing



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Injured at work – Workers Compensation 101

Work Injuries

If you are injured at work, or in the course of your work, you may be entitled to claim compensation for the following types of injuries:

- Physical injuries (i.e. muscle strains, back injuries)
- Aggravation of diseases
- Aggravation of pre-existing injuries
- Psychological injuries
- Hearing loss

Statutory claims

1. Governed under the Workers' Compensation and Rehabilitation Act 2003
2. Covers all “workers” in Queensland other than Commonwealth Government employees or those employed by Comcare licensees.
3. Is a **no fault** scheme where a worker can receive compensation regardless of who was at fault for the injury. With the exception of injuries that are intentionally self-inflicted or caused by the worker’s misconduct.
4. To be covered, you must have suffered the injury in Queensland, or if it happens elsewhere, your main place of employment must be in Queensland. Particularly relevant to **interstate workers**.
4. Includes **journey claims for injuries travelling to, from or for work**.

Overview of Stage 1 - Statutory Entitlements

1. **Reasonable medical & rehabilitation expenses**
2. **Weekly benefits – income payments, generally:**
 - a. First 26 weeks – 85% of pre-accident net weekly earnings
 - b. 27 weeks to 2 years – 75% of pre-accident net weekly earnings or 70% of QLD ordinary time earnings, whichever is greatest
 - c. 2 years to 5 years – as above but only if the likely degree of permanent impairment will be more than 15%
3. **Return to work assistance**
 - a. Worker's obligation to participate or benefits can be stopped.
 - b. RTW plan must comply with medical direction.
 - c. Common issues – employer breaching.

Common Law claims

- Can only be commenced once a Notice of Assessment (lump sum offer) is issued
- Common law claims, need to prove:
 1. Negligence – did the employer fail to take reasonable steps to prevent an injury
 2. Damages – an injury which has resulted or will likely result in a loss
- Heads of damages – general damages, past loss of income, future loss of earning capacity, loss of superannuation, future medical/rehabilitation/equipment/home modification expenses, care and assistance only if it was paid for.
- Generally speaking Claims must be commenced within 3 years of the date of injury

WorkCover Statistics

These statistics cover all industries over a 12-month period (2021-2022), reported on in the latest QLD Workers' Compensation Scheme Statistics Pocketbook

- 92,000 lodged claims each year
- Only 4% proceed to common law negligence claim.
- 3% of all decisions are disputed and reviewed.
- 41% of review decisions are successfully appealed.
- Average settlement of a negligence claim is \$175,772
- 91.7% of clients return to full time work with same employer even after common law claim. Those that don't return usually are not able to fulfil duties of their roles which must be held open for 12 months.



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Injured on the road?

A guide to CTP Claims and
rehabilitation

Summary

The topic of CTP claims is a broad one so today I want to cover:

- An overview of the CTP scheme – relevant legislation and insurance policy;
- An overview of the claim process



Overview of CTP scheme

In Queensland, all vehicles on the road, including motorbikes, must be registered and have Compulsory Third-Party (CTP) insurance.

The relevant legislation regulating CTP claims is the *Motor Accident Insurance Act 1994* ('MAIA'). It contains the policy of insurance which insures against "*liability for personal injury caused by, through or in connection with the insured motor vehicle anywhere in Australia*".

The person insured by the policy is "*the owner, driver, passenger or other person whose wrongful act or omission in respect of the insured motor vehicle causes the injury to someone else*"

The CTP scheme is a fault based scheme. The policy doesn't insure a person for "*loss or damage attributable to the person's own wrongful act or omission*"

Overview of CTP scheme

The CTP insurers in Queensland include:

- AAI Limited (trading as Suncorp)
- Allianz Australia Insurance Limited
- QBE Insurance (Australia) Limited; and
- RACQ Insurance Limited (trading as RACQ Insurance) – RACQ stopped offering policies from 1 October 2023 and are withdrawing from the scheme this year.

The *Act* also creates the Nominal Defendant which is taken to be a licensed insurer. The Nominal Defendant deals with claims in respect of unidentified or uninsured vehicles



Who is covered under the CTP scheme?

CTP insurance covers:

- Drivers
- Passengers
- Pedestrians
- Cyclists or motorcyclists injured by a vehicle
- Witnesses to accidents (nervous shock claims)/Rescuers (*Caffrey v AAI Limited*)
- Dependents of persons killed in accidents (*Civil Proceedings Act 2011*)



What injuries are covered?

The MAIA applies to personal injury caused by through or in connection with a motor vehicle if the injury is a result of :

- The driving of the motor vehicle; or
- A collision, or action taken to avoid a collision, with the motor vehicle; or
- The motor vehicle running out of control; or
- A defect in the motor vehicle causing loss of control of the vehicle while it is being driven; and
- Is caused, wholly or partly by a wrongful act or omission in respect of the motor vehicle by a person other than the injured person (s5(1) MAIA)

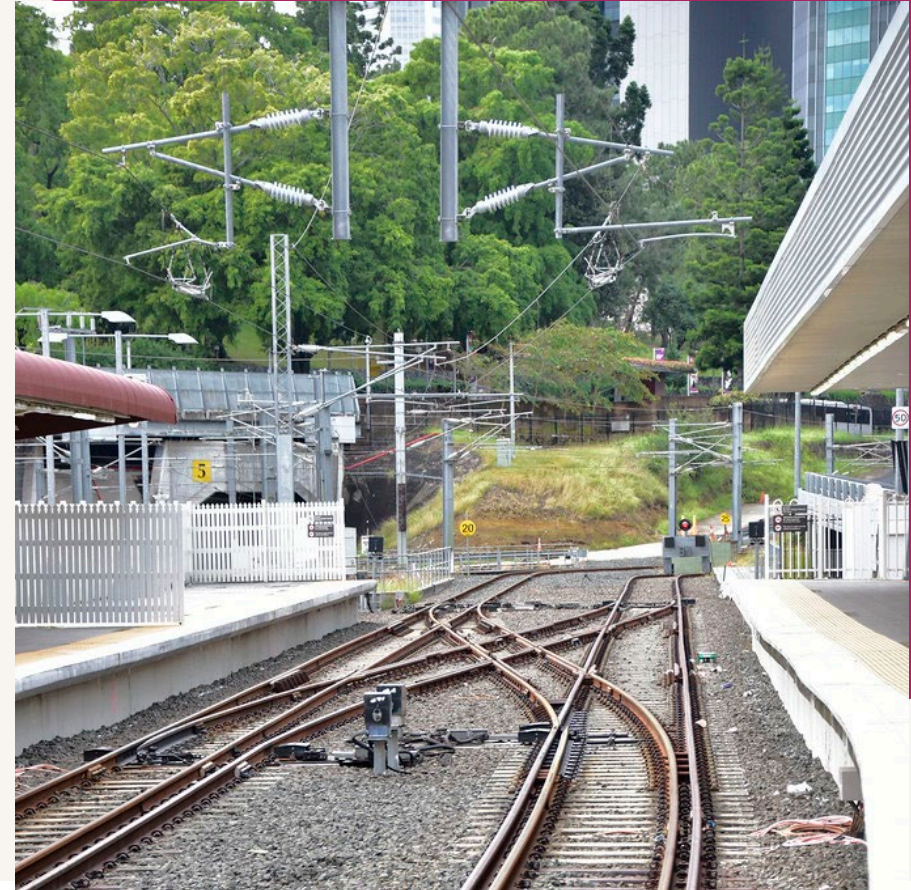


What Injuries are not included?

MAIA only applies to uninsured vehicles if the vehicle accident happens on a road or public space. (s5(2) MAIA).

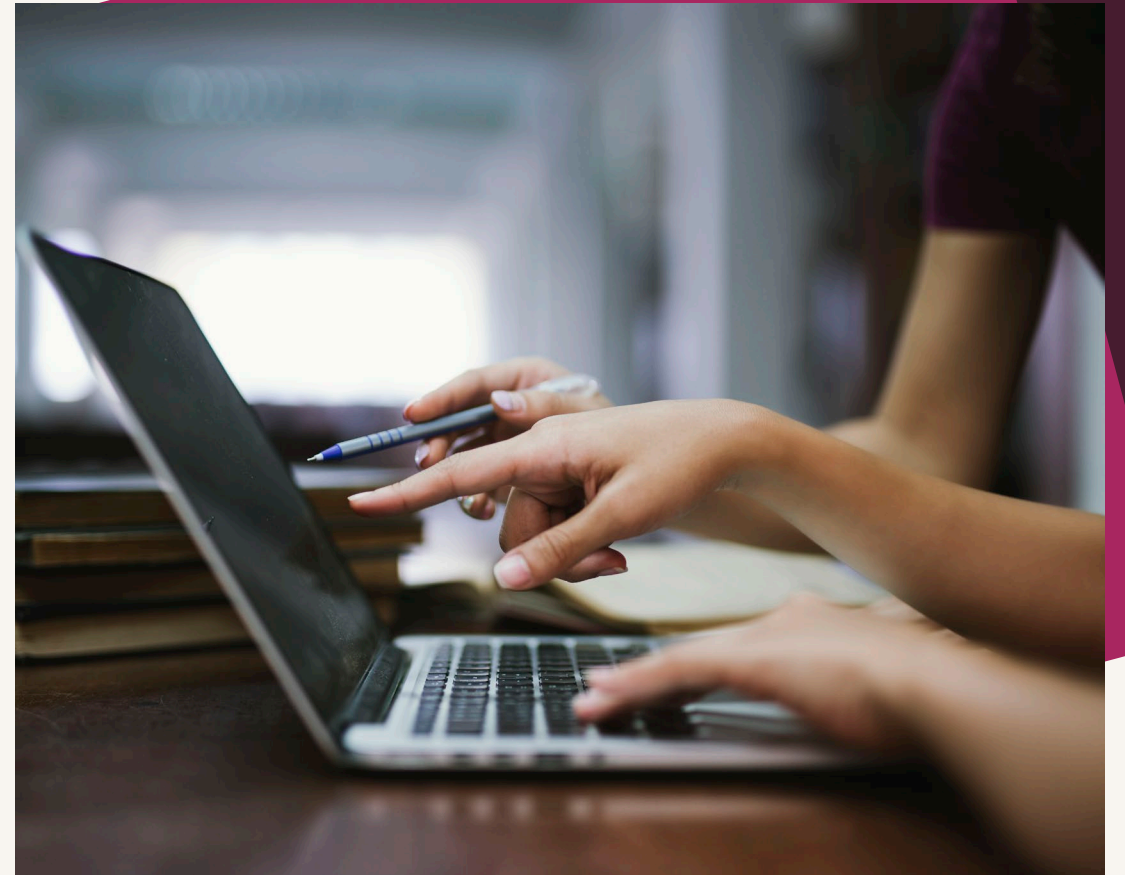
MAIA does not apply to personal injury in connection with:

- A tractor, backhoe, bulldozer, end-loader, forklift, industrial crane or hoist or any mobile machinery.
- An agricultural machine.
- A motor vehicle adapted to run on rail or tram tracks or amphibious vehicle. (Unless the accident occurs on public roads (s5(3) MAIA).



Claim Process- How to make a claim

1. A person who proposes to make a claim (including a person acting in a representative capacity) must report the accident to the police – s34 MAIA
2. Complete and lodge the Notice of Accident Claim Form with the CTP insurer of the vehicle at fault, within the strict time limits that apply – s37 MAIA
3. Include a CTP medical certificate with your claim, which has been completed by your own doctor, if possible.
4. Include a law practice certificate (which addresses) the claims farming requirements
5. Provide a signed authority
6. Provide certified photographic identification



Applicant Time Limits

A Notice of Accident Claim form must be lodged with the insurer of the vehicle at fault within the period ending on the earlier of the following dates:

- **nine** months after the motor vehicle accident or the first appearance of symptoms; or
- **one month** after the Claimant first consults a lawyer about the possibility of making a claim

If notice isn't given within those time frames the obligation to give the notice issues and a reasonable excuse for the delay must be given.

Strict time limits apply to Nominal Defendant claims. If a claim is to be given to the Nominal Defendant because the motor vehicle cannot be identified it must be given within **three months** of the motor vehicle accident with an absolute bar if the notice is not given within **nine months** (s37 MAIA).

What damages can I claim in a CTP claim?

Awards of damage for personal injuries are governed by the ***Civil Liability Act 2003*** ('CLA') and include:

- pain and suffering and loss of enjoyment of life (general damages) – ISV scale per regulations
- medical, rehabilitation, medication and general expenses
- Loss of income and superannuation – past and future
- Gratuitous care
- future expenses, and
- home modifications, home help and nursing and attendant care.



Exclusions in the *Civil Liability Act 2003* from claiming damages because of particular behaviour

There is an exclusion if the person who suffered harm was engaged in conduct that was an indictable offence / contributed to risk of harm. (s45 CLA/Brown v Logan City Council [2019] QSC 46).

Presumption of contributory negligence where the person who suffered harm was intoxicated. Reverse onus – person to prove the intoxication did not contribute to the breach of duty or that the intoxication was not self-induced. (47 CLA/French v QBE Insurance (Australia) Limited [2011] QSC 105).

Presumption of contributory negligence if the person who suffers harm relies on the care and skill of a person known to be intoxicated. Person must be at least 16 and was aware or ought to reasonably have been aware the person was intoxicated. (s48 CLA/Hawira v Connolly [2008] QSC 4).

Rehabilitation

CTP Insurer obliged to provide reasonable and appropriate rehabilitation – s51 MAIA

Rehabilitation is central to a well-run CTP claim

Key cases:

Delaney v AAMI [2007] QSC 174 – appointment of treatment providers within agreed specialties

Aldridge v Allianz [2009] QSC 257 – what was the reasonable and appropriate accommodation option to be funded by the insurer

McIntyre v AAI Limited [2021] QSC 251 – rehabilitation requests partially approved or denied. Up to Applicants to determine what rehabilitation and treatment services are undertaken not Insurer.

Can I claim my legal costs?

Recovery of costs prescribed in *Motor Accident Insurance Regulation 2018*

Lower offer limit presently \$49,700

Upper offer limit presently \$82,870

Declared costs limit \$4,160



All Other Injuries

Public Liability Insurance



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Public liability

Public liability law applies if you are:

- Injured as a subcontractor
- Working under an ABN (although some ABN holders may be covered by WorkCover)
- Injured by a third party at work

If you were owed a duty of care by the person at fault, and they breached this duty and this lead to your accident, you could be successful in a public liability negligence claim.

What else does it cover?

What else does public liability cover?

- Accidents on private property – residential accidents (against a landlord or real estate agent)
- Dog attacks
- Commercial and retail premises (i.e. slips, trips and falls at the supermarket)
- Injuries from parks, playgrounds, schools and footpaths
- Injuries from sporting activities, recreational activities and water sports

Superannuation

Income Protection, TPD and Insurance Claims



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Why claim superannuation?

If you are unable to work for any medical reason, you may be eligible to claim insurance through your superannuation.

You may be able to claim for:

- Income protection
- TPD benefits
- Terminal illness benefits

Disability benefits

Total and Permanent Disability (TPD) Benefits:

- Insurance benefits that can be claimed if you are unable to perform the work that you are reasonably trained or qualified to do by education, training and experience.
- You do not have to be unable to do ALL work, just the work you have the skills to do.

Total and Temporary Disability (TTD) Benefits:

- Usually called income protection or salary continuance
- Usually pay a monthly benefit for up to 2 years, 5 years, until age 65 etc. (depending on the individual policy).

Multiple claims?

- Yes for TPD
- No for TTD/ Income Protection

Terminal illness benefits

1 July 2007 legislative amendments:

- You can access your super if you have a life expectancy of less than 24 months, and any benefits released are entirely tax-free.
- Later changes made by most Super Funds/Insurers mean that many people can claim their life/death insurance benefits whilst they are still alive.

How long does a terminal illness claim take?

- Anywhere from 2 weeks to 3 months depending on the claim and whether documents have been completed correctly.

Case Example

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Questions?

