



Contributory negligence: can I make a personal injury claim if I was partially at fault?

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When you've been injured, for example, in a motor vehicle accident, or through medical negligence or perhaps a fall in a public place, it's possible that you may have some responsibility for your own injuries. Even where there is some contributory negligence that led to your injury or illness, other factor/s that caused the injury, including another person's negligence, may still entitle you to make a personal injury claim.

Importantly, just because you have some level of responsibility for your injury, it does not necessarily mean that you are not able to make a claim for compensation in Queensland.

What is contributory negligence?

Where an injured person makes a personal injury claim in relation to an injury for which they are partially responsible, it is likely that the concept of 'contributory negligence' will apply. The concept of contributory negligence applies to reduce a claimant's compensation claim to the extent that they, themselves, are responsible.

The idea behind the concept of contributory negligence is that:

another person should only be required to compensate someone for the injuries to the extent they are responsible for that injury;

an injured person should not be permitted to claim compensation to the extent that they, themselves, are responsible for that injury.

What happens to my claim if contributory negligence applies?

Where contributory negligence applies, the percentage contribution of each party is calculated based on the facts of the circumstances of the injury. The compensation payable to the injured person is then reduced by the percentage amount that they are responsible.

Example of reducing the compensation payable when contributory negligence is proven

To apply this practically, we can consider the example of a person who suffered \$100,000 of loss due to an injury for which they are 30% responsible.

That would mean that they would only actually receive \$70,000 of compensation once the contributory negligence is taken into account.

In the most extreme circumstances, it is possible that the compensation claim could be reduced by 100% (i.e. to \$0) if a Court, after hearing all of the evidence, considered the claimant to be fully responsible for the circumstances that led to the injury.

Examples of situations where contributory negligence may apply

One of the most common instances where a compensation amount may be reduced due to contributory negligence is where a person failed to take reasonable care for their own safety and take steps to prevent the injury.

Injuries from a motor vehicle accident

A practical example of contributory negligence in the case of a [CTP claim after a road accident](#) could be where:

Driver A (the claimant) entered an intersection from a give-way sign;

Another driver (Driver B) entered the same intersection at the same time by failing to stop at a red light;

Driver A is injured when Driver B's car strikes them in the intersection; and

Driver A could have seen Driver B if they had looked properly and potentially avoided the impact and subsequent injury.

In these circumstances (depending on a number of other factors) it's possible that any

compensation payable through a CTP claim process could be reduced to recognise that the claimant should have checked for oncoming traffic before they entered the intersection from the give way sign (even though the other driver failed to obey a stop sign).

Workplace injuries

In [workers' compensation claims](#), it's possible that your damages may be reduced to the extent that you were failing to follow company policy or your boss's instructions (if they would have prevented the injury), or where you were not taking enough care for your safety.

Intoxication often leads to a reduction in compensation due to contributory negligence

Another common example of a situation where contributory negligence could apply is where the injured person is intoxicated and their intoxication partially caused their injury. This can often be the case in CTP claims after a road accident and [public liability claims](#); for example, slips and falls in a public place, including intoxicated in a hotel, shopping centre, rental property or holiday rental.

How can a personal injury lawyer help?

It is particularly important for claimants who may be partially responsible for their own injuries to consult an expert personal injury lawyer to provide advice and assistance about their claim.

This is because needing to make submissions and negotiate in relation to the level of contribution of the parties (which can significantly affect the amount of compensation) adds an extra layer of complexity to the claim.

Some of the considerations your lawyer may discuss with you include:

- whether it is worthwhile to make an early admission about your contribution in an attempt to reach an earlier, less costly resolution; and

- what evidence may be necessary to support your claim if the other party/ies say that you are responsible or partially responsible, to ensure that your responsibility is not overstated by those other parties.

At IM Lawyers, we run personal injury claims on a 'no win no fee' basis and offer an initial free consultation, so it costs you nothing to find out where you stand.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.