

What are “heads of damage” in a personal injury claim?

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When quantifying the value of potential damages in a personal injury claim, there are some guidelines about what types of compensation can and cannot be claimed. To assist with this assessment process, the damages are broken down into categories called ‘heads of damage’.

In this article, we will go through some of the most common heads of damage in personal injury claims in Queensland and discuss what can be included in each category.

General damages in a personal injury claim

This head of damage addresses the actual injury and the impact it has had on an injured person. It is to compensate the injured person for the pain and suffering and reduction of mental or physical abilities caused by their injury.

The general damages calculation method changes for different types of personal injury claims. For example:

> for Queensland motor vehicle accident/CTP, medical negligence, and most public liability claims, general damages is calculated pursuant to a formula in the Civil Liability Regulations 2014 (Qld);
>
> for Queensland common law workers’ compensation claims, this is calculated pursuant to a formula in the Workers’ Compensation and Rehabilitation Regulation 2014 (Qld); and
>
> some historical child sexual abuse claims will be calculated without any reference to any formula but instead with reference

to previous court decisions in comparable claims.

Some of the evidence considered when calculating general damages includes:

medical records;

medical reports and opinions about the whole person impairment for the injury and the impact of the injury on the injured person; and

information from the injured person about the impact of their injury on their life.

Economic loss component of a personal injury claim

Economic loss encompasses income lost in the past due to the injury, as well as expected lost income in the future due to the injury.

Past economic loss is generally more straight forward to calculate based on the injured person's pre-injury and post-injury income.

Future economic loss is more difficult to quantify as it involves attempting to predict the injured person's earning capacity into the future. This will involve the consideration of:

potential earnings capacity if the injured person had not been injured;

how long the injured person would have continued to work were it not for the injury;

the injured person's actual earning capacity since and because of the injury; and

medical evidence about the expected improvement in the injury and the impact it may have on the injured person in the future.

Some of the evidence that is considered when calculating economic loss includes:

tax returns;

pay slips;

employment information; and

medical opinions about the effect of the injury on the injured person’s ability to work.

Special damages when calculating personal injury compensation payable

Special damages include compensation for monies the injured person has paid and is expected to pay into the future because of the injury. This may include the cost of:

medication taken to treat the injury;

equipment required to assist with treating or dealing with the injury;

medical appointments;

adaptive equipment and installation costs required due to the injury;

imaging of the injury; and

travel to and from appointments or attendances associated with the injury.

This head of damage may also include amounts paid by third parties (and which may need to be repaid to that third party upon finalisation of the claim), such as refunds to Medicare and private health insurance providers.

Some of the evidence that is considered when calculating special damages includes:

receipts;

invoices;

car log books;

Medicare statements;

private health insurance statements; and

medical records.

Gratuitous care compensation after a personal injury

For most personal injury claims in Queensland, the injured person can claim the commercial value of services provided to them for free by their family and friends.

For example, if the injured person is no longer able to cook for themselves due to the injury, they may seek assistance from their family members to cook for them instead. In that case, the injured person can include in the claim an amount equivalent to the cost of having a paid provider perform that service for them.

However, before an injured person can include this head of damage in their claim, they must meet a minimum threshold of six (6) hours of gratuitous care per week for a minimum of six (6) months. If this minimum threshold has not been met (i.e. they have received less than 6 hours per week of care or care for less than 6 months), then no gratuitous care can be claimed.

Gratuitous care can be claimed for care provided in the past, or expected to be provided in the future. Gratuitous care is not claimable in workers' compensation common law claims in Queensland.

Some of the evidence that is considered when calculating gratuitous care includes:

logbook/diary records of assistance provided; and

statements from carers in respect of the care they provide.

You can read more about this in our earlier blog, "Compensation for gratuitous care in personal injury claims".

Paid care compensation in a personal injury claim

In some instances, the injured person may pay a provider to care for them or assist them because of the injury. For example, where an injured person is no longer able to mow their lawn, they may pay a gardener to do this task. Where this is the case, there is no

minimum threshold to be met before the injured person can claim this amount.

The injured person can claim compensation under this head of damage for care they have paid for in the past (related to their injury), or that is expected to be provided in the future.

Some of the evidence that is considered when calculating paid care includes:

- receipts;
- correspondence confirming the provision of and price of the paid care; and
- statements from the provider of paid care.

Interest and discounts

In some cases, the injured person may be able to claim an amount of interest in respect of personal injury damages in the past. This recognises that the person has been out of pocket for those amounts and has lost the opportunity to use that money during that time.

Similarly, because the injured person will be receiving the funds before they would have otherwise (if they hadn't been injured), the damages for the future will be discounted. This is done by a 5% multiplier on the weekly future amount based on the number of years the loss is expected to continue.

Differences of opinions

While breaking a personal injury claim up in this way may make it clearer, there is still likely to be a significant difference of opinion about the appropriate allowance for each of these heads of damage between the parties. This can be the case even where the parties are relying on the same evidence.

This is particularly evident in situations where:

- there are differences of opinion as to whether the loss relates to the injury (whether partially or at all); or
- the parties are contemplating what the available evidence suggests will happen in the future.

Get help from a personal injury lawyer

If you need advice or assistance to calculate the true value of your personal injury claim, to ensure you maximise your entitlements, please get in touch with us. We offer free advice on all types of claims and run claims on a ‘no win, no fee’ basis, 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.