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A comprehensive guide to making and finalising a personal injury claim

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One of the most common questions we will be asked as personal injury lawyers, particularly at the initial consultation, is “what happens now?” Personal injury matters involve many small steps within bigger and bigger steps which all work towards the finalisation of a compensation claim. All types of personal injury claims are different and there can be some additional or different steps for every different claim. This article breaks down the general steps usually taken throughout a personal injury claim in Queensland.

Pre-court process when preparing a personal injury claim

Most people think that they need to go to court to seek compensation for their injuries, however, most personal injury claims don’t ever progress to filing a claim with the court, let alone attending court. Court processes are costly and take a long time to conduct. To counter this, the government introduced what is called a ‘pre-court processes’.

Gathering information related to the event and injury

To take any steps in relation to a personal injury claim, the injured person (also referred to as the Claimant or Plaintiff) will need to gather relevant information about the injury or illness and about the person or entity they consider responsible for that injury (‘the Respondent’). This may include:

- the name and contact information of the Respondent;
- for a motor vehicle accident/CTP claim, details of the vehicles involved in the accident;

for a workers' compensation claim, employment information and the appropriate employer contact person;

for a medical negligence claim, details of the medical practitioner who the injured person believes has done something wrong to cause the injuries;

for child sexual abuse claims, details about the perpetrator, an institution where the abuse occurred (for example, a church, sporting organisation, scouts etc), dates etc;

information about the injury, including contact information for any medical practitioners (GPs, surgeons, psychologists, psychiatrists, specialists etc) who have treated that injury; and

information about the loss the injury has caused the injured person to suffer.

The Claimant may have spoken with, or engaged a lawyer at this point to assist them with the pre-claims process through to finalisation of their claim.

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Notice of Claim / Pre-court Notice Document

To begin the pre-court process of a personal injury claim, the first step is to complete and provide a 'Notice of Claim'. While the requirements of what is to be included in a Notice of Claim differ depending on what type of personal injury claim you are making, the requirement to provide a notice to the Respondent is mandatory.

Usually, the Respondent will have a law firm acting on their behalf and this notice can be served via that legal representative.

Whilst the format of a Notice of Claim may differ, the information is essentially the same for all claims and includes:

what happened to cause the injury;

why the Claimant says the Respondent is legally responsible for their injury;

how much compensation the Claimant is seeking from the Respondent; and

information and detail to assist the Respondent to understand the nature and extent of the claim.

Response from respondent

Once the Respondent has received the Notice of Claim, they have some time to consider it and then respond to the injured person. The Respondent's response will generally include:

whether the Respondent is the correct person to respond to the claim;

whether there is any other information they require to investigate the claim; and

whether they accept that they are liable (i.e., that they are responsible for the injury) for the claim.

Investigations of the claim – records and information

Once the Claimant receives the Respondent's response to the Notice of Claim, both parties will generally enter a period of investigation for the claim.

This will generally involve gathering, reviewing and exchanging information and records, including:

medical records;

employment records;

police files (if applicable – e.g. for motor vehicle accidents/CTP claims);

tax records;

workplace health and safety records (if applicable – e.g. for workers compensation claims);

medical practitioner notes (if applicable – e.g. for medical negligence claims); and

school records (if applicable – e.g. for historical child sexual abuse claims).

Medical evidence – Independent Medical Examination and medico-legal reports

In many cases involving personal injuries, both parties (Claimant and the Respondent) will refer the injured person for an Independent Medical Examination (‘IME’), and they will obtain what is called a 'medico-legal report' to support their respective cases. These reports are prepared by appropriately qualified individuals (usually medical specialists) who can answer questions about the nature and extent of the Claimant's injuries.

These reports will typically address the following matters:

- a diagnosis of the subject injury;
- an assessment of the ‘whole person impairment’ (WPI) value (as a percentage) of the injury (used to calculate some aspects of compensation);
- discussion of any previous injuries or illnesses that may be impacting the subject injury or illness and apportioning the WPI between those various injuries and illnesses;
- discussion of the impact that the injury has had on the injured person’s ability to work; and
- discussion of the impact that the injury has had on the injured person’s ability to undertake their usual activities of daily life.

For more information about IME’s and what to expect if you are attending an IME appointment, our earlier blog, “Independent medical examinations in personal injury claims” may be helpful to you.

Assessing the prospects of the personal injury claim

Once the parties have investigated the claim and have reviewed all of the information and records they have gathered, they will then look to assess the claim. This will include an assessment of the following items based on the available evidence:

- Liability – whether the Respondent is liable and to the extent to which it is responsible for the loss;
- Quantum – the monetary value (how much compensation should be paid) of the loss suffered by the injured person.

It is possible that this may be followed by a period of ‘informal settlement negotiations’ may occur. This may include the parties

communicating informally to try to reach a settlement agreement to avoid the need to attend a conference (the next step), and ultimately taking the case to court if they cannot agree.

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Compulsory conferences in personal injury claims

Once each of the parties has investigated and quantified (how much compensation should be payable) the claim, they are then required to attend a ‘compulsory conference’. This is an opportunity for the parties to meet (with their legal representatives and insurers if appropriate) to discuss the claim and each party’s views on how a court would probably decide the claim. Importantly, the parties will generally try to use this as an opportunity to try to settle the claim.

Exchange of final offers to settle the claim

‘Mandatory Final Offers’ (sometimes referred to as an MFO or a ‘Written Final Offer’) are a legislative requirement of personal injury claim processes. They are a final attempt to settle a matter in the pre-court process (avoiding the need to go to trial). Generally, they are exchanged between the parties at the conference, although sometimes this may occur slightly after.

The mandatory final offers are an important step because if the matter cannot be finalised before a judgement is delivered for the claim, it may have an impact on the way the court determines the matter of payment of legal costs if the matter goes to trial and judgement.

It is very important that you are kept appraised by your legal representative about all relevant issues which might impact on the risk of proceeding to a trial, and the potential cost consequences associated with your case generally.

Settlement by agreement

The Claimant and Respondent(s) can seek to resolve the claim at any stage following the delivery of the Notice of Claim. In fact, some matters can settle within a few months of the claim process beginning, particularly claims involving relatively minor injury claims involving motor vehicle accidents.

If you would like some more detailed information about this finalisation process following the agreement, you can refer to our previous blog, “Finalising your personal injury claim once settlement is agreed”.

Court process in personal injury claims

If a personal injury claim cannot be finalised following the pre-court process, then court proceedings will need to be issued.

Drafting, filing and serving court documents

Following the completion of the Compulsory Conference, if the parties are not able to reach an agreed settlement, the injured person is required to draft and file a ‘Claim’ and ‘Statement of Claim’ (‘the Initiating Documents’). The Initiating Documents are the

two court documents required to start the court process for personal injury claims.

The Claim is an overview of what the injured person is claiming the Respondent (who during the court stage is now called the Defendant) owes them.

The Statement of Claim is a more detailed document than the Notice of Claim, including information about the action, including:

- why the injured person says the Defendant is responsible for the injuries;
- the events surrounding the injury; and
- details of the loss suffered by the injured person.

The Initiating Documents are to be filed with the court and must be served on the Defendant.

There are strict time requirements for filing and serving court documents.

Respondent documents

Once the Initiating Documents have been served on the Defendant/s, the Defendants are required to file a ‘Notice of Intention to Defend’ and ‘Defence’ (‘Defendant’s Documents) with the court and also serve these documents on the Claimant.

Like a Claim, a Notice of Intention to Defend is simply a short notice providing the necessary information about the Defendant who intends to defend the claim.

Like the Statement of Claim, the Defence is a more detailed document providing:

- the Defendant’s response to the allegations made in the Statement of Claim;
- reasons why:
  - the Defendant says they are not responsible for the loss; and
  - the loss was not suffered in the way the injured person alleges.

Upon considering the Defendant’s Documents, a Plaintiff/Claimant may consider it necessary to respond to some aspects of what is pleaded in the Defence and thus file and serve what is called a 'Reply'.

Trial preparation in personal injury claims

When drafting the court documents, the parties should ensure that the documents are complete in every respect. Whilst it is possible to amend some of these court documents during the court process, there is no guarantee the Judge will allow the changes. Apart from correcting mistakes which only come to light later on during the court process, a party's court documents should be complete and provide a clear basis for the claim or defence of it (as applicable).

Due to the work needed to go into properly preparing for the compulsory conference stage of the pre-court process, there may not be that much more to do in terms of preparing a case for a trial.

Certain formal court steps will need to be taken. These essentially involve updating disclosure of further claim related documentation, updating claim related information, reviewing evidence generally (witnesses, expert reports etc) and generally ensuring the case is ready to proceed to a trial.

Mediation options to settle your personal injury claim before a trial

The parties will then usually make a further attempt to reach a settlement before a trial by holding a mediation.

A mediation is similar to a conference, however, there will be an additional person in attendance called a mediator. A mediator will assist the parties to identify the main areas of disagreement and help the parties try to reach an agreement prior to the expensive step of a trial.

Trials in personal injury claims

Trials are expensive and usually very stressful, especially for the Plaintiff/Claimant. It is good practice that all reasonable attempts are made to settle the claim before the need for a trial.

If a trial is necessary, then both sides need to be ready to lead the evidence they consider necessary to 'prove' their respective cases. For the Plaintiff/Claimant, they will generally need evidence to:

- persuade the Judge that the Respondent is legally responsible for the injuries they sustained; and
- allow the Judge to award them the maximum compensation they are entitled to.

The Defendant essentially does the same, but in reverse.

It typically takes about 12 months from the date a Claim and Statement of Claim is filed in the court for the case to get to trial. A trial will usually then take an overage of 3–5 days. After the trial is completed, the Judge will usually ‘reserve’ their decision while they consider all the evidence and submissions. It can take anywhere from 3-12 or more months for a judgment to be delivered following a trial.

Need help with a personal injury claim?

The team at IM Lawyers are highly experienced personal injury lawyers who can assist you throughout this entire journey of starting your personal injury claim through to settling the claim and receiving compensation. We make sure the process is as smooth as possible for our clients. 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.