

## Liability Decisions – Statutory Benefits

If you are involved in a motor accident you may be entitled to statutory benefits under the Motor Accident Injuries Act 2017 ('the Act'). Statutory benefits include payments made to you for treatment and care and weekly benefits (benefits for loss of earnings or loss of capacity to work). To be eligible to receive these payments, we must first accept liability for your claim.

This fact sheet will help you understand:

- What information you can provide to help us assess your entitlements to benefits,
- When you can expect to know whether you are eligible to receive benefits and,
- The different decisions we will make on your claim and how they affect you.

### What information can help us make a liability decision for your claim?

To ensure that you receive the benefits you are eligible for under your claim as quickly as possible, you will need to provide us with any information we may ask for about the motor accident or your injuries.

At a minimum, we will ask you for the following information help us assess your claim:

1. A claim form, accompanied by a medical certificate diagnosing your injuries from the motor accident and,
2. Evidence to verify that your motor accident occurred.

#### A claim form

A claim form is also called an 'Application for Personal Injury Benefits'. It's important that you provide an accurately completed form as soon as possible following the motor accident.

For us to accept your claim form, please ensure you:

- Complete all sections of the form to the best of your ability,
- Sign and date all the sections which require a signature and,
- Provide the claim form accompanied by a Certificate of Capacity or Certificate of Fitness that has been completed by your nominated General Practitioner.

#### Evidence to verify your motor accident

You'll need to verify the circumstances of the motor accident to be eligible to claim.

To verify your motor accident, you will need to either confirm that you have reported the motor accident to the NSW police by providing us with a Police Event Number. We'll use this number to request a copy of the Police Report.

If the NSW police did not attend the motor accident, you'll need to:

1. report the accident to the NSW Police as soon as possible. This can be done either in person or via the Police Assistance Line on 131 444 and,



2. also provide one or more of the following:
  - Photographs from the accident scene
  - Witness statements
  - Hospital discharge summaries
  - Media reports
  - Property damage insurance claim information

If for some reason you are unable to provide a Police Event Number or any of the above evidence, we'll request that you submit a statutory declaration explaining why. The explanation will need to tell us why the accident was not reported to the police and why you don't have any evidence to support the circumstances of your motor accident.

If we do not have enough information to verify the details of the motor accident, this may impact your entitlement to statutory benefits.

#### **When do you need to provide this information to us?**

A completed claim form with evidence supporting the circumstances of the motor accident should be lodged within 3 months from the date of the motor accident. You may lodge a claim later, however, you will need to explain in writing the reason for the delay. If we don't receive a full and satisfactory explanation for the delay, this may impact your entitlement to statutory benefits.

#### **Why do you need all this information?**

The Act requires us to determine your entitlement to statutory benefits as soon as possible. To do this we use all this information to determine:

1. If the motor accident occurred in NSW and who was at fault for the motor accident. We will use the Police Report or your evidence of the motor accident to help us determine if you're entitled and how long you are entitled to benefits and,
2. If there was an injury resulting from the motor accident. We will use your claim form and your Certificate of Capacity or Certificate of Fitness to help us with this assessment.

### **How will I know if my claim is accepted?**

We will communicate a liability decision to you both over the phone and in writing.

There will be two liability decisions made on your claim and you will receive a phone call and letter where we'll explain each of them to you.

Once we receive your completed claim form and the accident has been verified, we'll contact you on the phone and in writing within 28 calendar days regarding the first liability decision. The letter will be titled "Liability Notice - Benefits up to 52 weeks".

If we accept liability for the first 52 weeks following your motor accident, this means we will:

- Cover the cost of reasonable and necessary treatment and care, and
- Pay weekly income benefit payments, where eligible



Then, within 9 months of receiving your completed claim form, we will contact you on the phone and in writing regarding the second liability decision. The letter will be titled “**Liability Notice - Benefits after 52 weeks**” and will inform you whether your entitlements will continue after the first 52 weeks.

If we accept liability after the first 52 weeks following your motor accident, this means we will:

- Continue to cover the cost of reasonable and necessary treatment and care, and
- Continue to pay weekly income benefit payments, where eligible

It’s important that you read these letters carefully to ensure you understand our decision and what it means for your claim. If you have questions about any part of our decision, or its effects to your entitlements, please call your Claims Advisor.

### **What is the difference between “first 52 weeks” and “after 52 weeks”?**

Generally, if you have been injured in a motor accident in NSW, you’ll be covered for the cost of reasonable and necessary treatment and care and weekly income benefits (if eligible), regardless of your type of injury or if you are at fault for the motor accident.

However, there are a few exclusions:

- If it is determined that your motor accident occurred during the course of your employment. If this is the case, you may be entitled to claim compensation under the *Workers Compensation Act, 1987*.
- If your vehicle was uninsured and you were wholly or mostly at fault for the accident.
- If you were charged or convicted with a serious driving offence as a result of the motor accident.

After 52 weeks, we must consider additional criteria to determine whether we can accept liability ongoing. The law requires us to take into consideration the severity of your injury and whether your actions caused or contributed to the motor accident.

We will accept liability for statutory benefits after 52 weeks if you:

- Have an injury which does not meet the definition of a ‘threshold injury’; and
- You were not ‘wholly or mostly at fault’ for the accident.

### **What do we mean by ‘threshold injury’ and ‘wholly or mostly at fault’?**

The law defines threshold injuries as soft tissue injuries and/or minor psychological and psychiatric conditions (such as an adjustment disorder or acute stress disorder). An injury is not considered a ‘threshold injury’ if you are diagnosed with a different type of injury. Please refer to the Threshold Injury fact sheet for more information.

We are also required to assess whether you have caused or contributed to the accident and/or your injuries. When doing this assessment, there are generally three likely outcomes:

1. That you were **not** wholly or mostly at fault, or
2. That you were wholly at fault for the accident and/or your injuries, or in other words you were 100% responsible for the accident occurring and/or your injuries, or



3. That you were mostly at fault for the accident and/or your injuries, or in other words you were partly responsible for the accident occurring and/or your injuries and your level of contribution to the accident and/or your injuries was more than 61% compared to any other party involved.

In some instances, we may determine that you contributed to the accident, but your contribution was less than 61%. This is referred to as 'contributory negligence'. If we make a decision like this, it may mean that your weekly benefits after the first 52 weeks (if eligible) will be reduced by the percentage of your contributory negligence. We'll give you more information if this applies to you.

#### **Why does this matter to me?**

If your injury is determined to be a threshold injury and/or you were wholly or mostly at fault for the accident you will not be entitled to statutory benefits after the first 52 weeks of the accident.

#### **What if you don't agree with a decision made on your claim?**

If a decision is made to deny liability for any part of your claim, we will first contact you to discuss the reason for our decision, what information we used to make our decision and how you can have the decision reviewed. This decision will also be sent to you in writing.

If you don't agree with a liability decision made on your claim you can request an internal review of our decision. The details about requesting an internal review will be provided on the letter, but you may also contact your Claims Advisor who can assist you with this process.

Alternatively, should you be dissatisfied with our standard of service, you may make a complaint. Please contact your Claims Advisor to obtain their contact details or refer to the attached Complaints fact sheet.

