

State of the nation 2026

A guide to procedural rules, limitation periods,
assessment of damages and recent cases for personal
injury claims in each Australian state

May 2026

Overview

Australia's personal injury landscape continues to evolve at pace. While each jurisdiction retains its distinct legislative framework, 2026 has seen a sharpening of the differences that matter most to insurers, particularly in pre-litigation processes, limitation regimes, and the assessment of damages.

This year's guide distils the procedural rules, limitation periods and damages frameworks that shape claims outcomes in each Australian state and territory. From highly structured pre-action regimes under legislation such as PIPA in Queensland and the Wrongs Act in the ACT, to more flexible litigation pathways in New South Wales, the approach taken in each jurisdiction continues to influence both the timing and resolution of claims.

For claims managers managing national portfolios, these differences directly impact reserving strategy, investigation timelines and settlement positioning.

Across all states, courts remain guided by the fundamental principle of compensating claimants to the position they would have been in but for the injury. However, how that principle is applied, whether through capped regimes, threshold tests, or judicial discretion, varies significantly and continues to shift.

Designed for busy claims professionals, this report focuses on what matters in practice. Whether you are comparing jurisdictions, refining reserve strategies, or navigating complex liability exposures, this guide provides clear, jurisdiction-specific insights to support confident decision-making.

If you would like to discuss how these trends are likely to impact your portfolio or claims strategy, WKs General Liability partners are available to assist. Their contact details can be found at the end of this report.



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Key trends at a glance

- Sharper jurisdictional divergence: pre-action steps range from highly structured regimes (e.g. ACT/QLD) to minimal mandated steps in NSW.
- Limitation risk remains portfolio-critical: discoverability tests, extension discretion, and major exceptions (including for latent injury classes) vary materially by state.
- Claim values shifting: Changes to thresholds and indexed caps are shaping claim values across key jurisdictions.
- Upward pressure on claim values (notably VIC): recent awards and commentary point to increasing general damages momentum.
- Procedural discipline matters: early compliance checkpoints (notices, response windows, referrals, disclosure) can determine leverage and costs.

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Australian Capital Territory

Procedural rules and key dates

A comprehensive set of pre-litigation procedures for personal injury claims arising from alleged negligence is established under the *Civil Law (Wrongs) Act 2002* (ACT) (**the Wrongs Act**), with supplementary rules provided in the corresponding Regulations.

Section 51 Notice of Claim

The first pre-litigation step is to provide a **notice of claim**. Except for motor vehicle accident claims (which follow their own pre-litigation procedure) and claims arising from alleged child abuse, section 51 of the Wrongs Act requires that notice be provided within the earlier of:

- Nine months from the accident giving rise to the personal injury or the day symptoms of the injury first appeared; or
- Four months from the claimant instructing a lawyer to advise on damages for the personal injury or the day the respondent is identified (whichever is later).

Notice of a claim arising from alleged child abuse need only be given a “reasonable time” before the commencement of the proceedings.

Any delay in providing notice of a claim may be excused by providing a reasonable explanation.

Section 51 of the Wrongs Act and its corresponding Regulations set out the information required to be provided in the notice of claim. Among other requirements, the notice must include:

- the claimant’s identification (which entails their full name, residential address and date of birth);

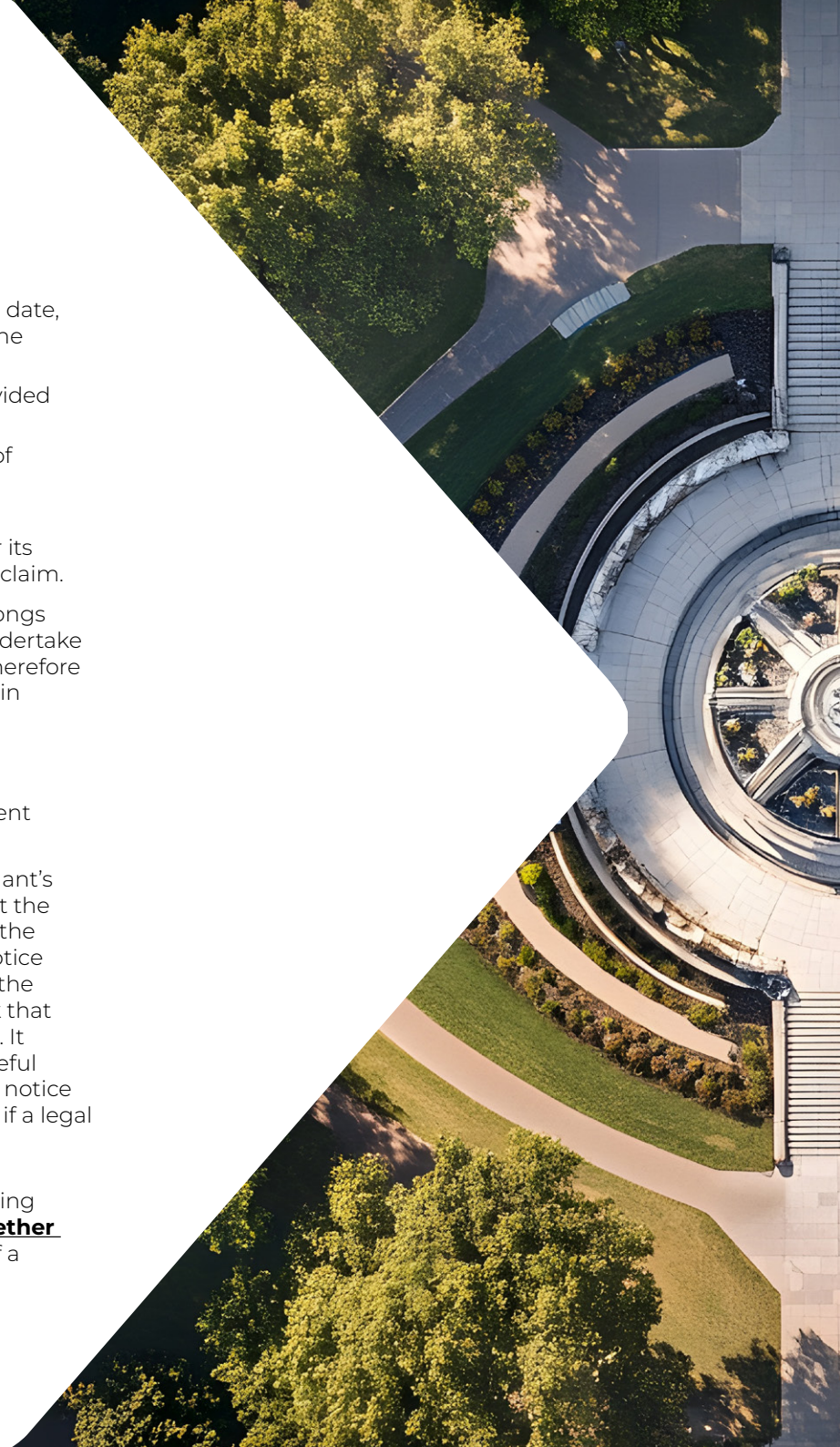
- details about the accident (including the date, time location, and a description of how the accident occurred);
- identification of any individuals who provided witness statements;
- details about the nature and treatment of the injury;
- particulars of economic loss; and
- an authority enabling the respondent (or its insurer) to obtain records relevant to the claim.

All the information required under the Wrongs Act is critical to a respondent’s ability to undertake liability and quantum investigations. It is therefore prudent to ensure all the information and, in particular, the authority are provided.

Response to the Notice of Claim

Following the notice of claim, the respondent is required:

- Within one month of receipt of the claimant’s notice of claim, **to raise any issues** about the claimant’s compliance with section 51 of the Wrongs Act. If this does not occur, the notice of claim is deemed to be compliant and the respondent will have no recourse to seek that the claimant rectify any non-compliance. It is therefore important that close and careful attention be given to the contents of the notice of claim at the earliest opportunity (even if a legal representative has yet to be appointed).
- Within one month of receipt of a complying notice of claim, **to notify a claimant whether it is a proper respondent** to the claim. If a



respondent is unable to determine whether it is the proper respondent, it must inform the claimant of the additional information required in order to make that determination. If the respondent concludes that it is not the proper respondent, it must communicate this to the claimant and provide any information that may assist in identifying the proper respondent.

- Within six months of receipt of a complying notice of claim, **to investigate the claim** and advise the claimant whether liability is admitted or denied. In that same timeframe, the respondent is also required to have made a fair and reasonable estimate of the damages and to seek to **resolve the claim** with the claimant.

Exchange of documents and information

To assist the parties to be able to properly consider the claim (including any quantum and liability issues), Part 5.3 of the Wrongs Act provides for the exchange of documents and information between the parties. This disclosure obligation extends to investigative reports, medical reports and reports relevant to the claimant's rehabilitation.

With the exception of documents and information already in the possession of the other party, the general rule is that documents must be disclosed within one month of receipt. A failure by a party to disclose a document may result in that party being unable to use the document in subsequent court proceedings. To enhance the enforcement of the parties' obligations under Part 5.3 of the Wrongs Act, the Court is empowered to provide assistance on application by a party.

Court proceedings

While the Wrongs Act seeks to mandate prelitigation steps, it is not uncommon for claimants to commence court proceedings notwithstanding non-compliance with these requirements. That non-compliance will not be sufficient to warrant a permanent stay of proceedings, and it is therefore incumbent upon respondents to raise any non-compliance with the court and to give consideration to whether to apply for a temporary stay of the proceedings or whether the non-compliance can be adequately addressed by adjustments to the standard court timetable.

Once proceedings are on foot, both the ACT Magistrates Court and ACT Supreme Court have comprehensive practice directions which provide a framework for the progress of litigated claims from the initiation of proceedings to final hearing. In short, both courts require parties to work towards having matters finalised within 12 months of the initiation of proceedings.

Limitation periods

In the ACT, limitation periods are governed by the *Limitation Act 1985* (ACT) (the **Limitation Act**).

Under the Limitation Act, personal injury claims are generally not maintainable if initiated more than three years after the day the claimant was injured, or after the claimant became aware that they had suffered an injury related to someone else's act or omission.

However, there are several exceptions to the general rule, including the following:

- There is no limitation period if the cause of action substantially arises from sexual abuse to which the claimant was subjected when they were a child.

- Compensation to relatives claims must be brought within six years following the relevant wrongful act or three years following the death of the person injured in that act (whichever is later).
- Claims arising out of motor vehicle accidents will turn on the scheme which was in place at the time of the accident.

Assessment of damages

Non-economic loss / General damages

Except in motor vehicle accident claims (where non-economic loss is limited to damages for loss of quality of life), non-economic loss in the ACT is awarded to compensate claimants for pain and suffering, loss of amenities, loss of expectation of life and disfigurement. There is no cap on non-economic loss in the ACT and general damages are assessed at large, based on the facts and circumstances of each case and by reference to earlier comparable cases.

Past and future out-of-pocket expenses

Claimants are entitled to recover out-of-pocket expenses directly attributable to their injuries resulting from a compensable incident. These comprise a broad range of costs, including medical fees, hospital bills, and travel expenses associated with obtaining necessary treatment. Any amount paid by Medicare, private health insurers or workers compensation insurers are also recoverable where those entities seek reimbursement from the claimant from any judgment or settlement. In addition, future treatment costs, projected based on the trajectory of the claimant's recovery and ongoing medical needs, are also recoverable. The determination of these anticipated expenses is typically guided by expert medical evidence.



Economic loss

Claimants are entitled to claim for loss of earning capacity causally related to injuries arising from compensable incidents. In its simplest form, this is calculated as the difference between what the claimant was earning on a net basis prior and after the incident.

Where a claimant has been in receipt of incapacity payments from a workers compensation insurer, this amount is recoverable by the claimant but will form part of a payback to the workers compensation insurer following judgment or settlement.

Awards for the future are generally calculated up to usual retirement age (e.g. 67) but may extend beyond that age if the claimant can establish an intention to work beyond then but for their injuries. Where a mathematical calculation can be made for future loss, the multiplier tables are utilised and discounted at 3%. Lost superannuation is also recoverable by reference to the relevant superannuation guarantee at the time. However, it was acknowledged in *Hall v Martin* [2020] ACTSC 233, that self-employed persons and contractors are not entitled to superannuation losses.

Fox v Wood damages

This is the income tax component of any incapacity payments made by the workers compensation insurer. Allowance for this head of damage ensures the workers compensation insurer is reimbursed for the totality of the payments it has made even though the claimant does not receive the benefit of that portion of the incapacity payment.

Domestic assistance and care

Claimants are entitled to recover an amount for domestic assistance and care (whether gratuitous or paid) which they have required as a consequence of injuries sustained in a compensable incident. Domestic assistance and care can include the following:

- household tasks (including grocery shopping, meal preparation, laundry and cleaning chores);
- gardening (such as mowing the lawn and watering the garden);
- house maintenance (such as changing light bulbs, cleaning the gutters and drains);
- vehicle maintenance (including washing the car and car repairs previously conducted by the claimant);
- personal care (including assistance with showering, body care, dressing and using the toilet); and
- assistance with other domestic responsibilities which the claimant would otherwise have undertaken for the benefit of others (such as their children).

Gratuitous domestic assistance and care provided in the past is generally determined by the market value of the services.

The claimant's need for domestic assistance and care in the future is usually guided by expert evidence and, in particular, occupational therapists who have expertise in this field and are also often able to provide an assessment of the likely commercial cost of provision of the domestic assistance and care needs of the claimant.

Other notes

Injured Workers

The *Workers Compensation Act 1951* (ACT) (**WC Act**) establishes the workers compensation scheme in the ACT. It provides benefits for workers who sustain injury (or develop an illness) during the course of their employment on a no-fault basis. The scheme allows payments for medical expenses incurred, lost wages and, if the required percentage as set out in the WC Act is reached, compensation for permanent injuries. Unlike other jurisdictions, there is no restriction on the duration a worker can receive workers compensation benefits, though there is scope for workers to agree to accept a lump sum payment in commutation of their ongoing entitlements.

Workers are not restricted from bringing a concurrent or subsequent common law claim against their employer and/or any other negligent person or entity. Those claims and any entitlement to damages are governed by the Wrongs Act.

If an employer does not hold workers compensation insurance, a worker can bring their claim (including any common law claim) against the statutory Default Insurance Fund. However, if there is any other person or entity from whom the worker can recover damages, the Default Insurance Fund will have no liability. Should the Default Insurance Fund be required to make payment to the worker (including in respect of any common law claim), it can seek to recover those payments at a rate of three times from the uninsured employer.

Australian Government Employees

The workers compensation scheme for employees of Federal Government agencies and statutory authorities is governed by the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**). The SRC Act provides a similar entitlement to incapacity payments and treatment expenses to Federal Government workers injured in the course of their employment. The Scheme is managed by Comcare.

While employees can elect to bring a common law claim against their employer, damages are restricted to non-economic loss and are capped. However, these restrictions do not apply for claims against negligent third parties.

Vicarious liability for child abuse

In late 2025, amendments were made to the Wrongs Act retrospectively providing that organisations could be vicariously liable for child abuse perpetrated by individuals akin to an employee of an organisation. An individual is 'akin to an employee' if the individual carries out activities that are part of the ordinary activities carried out by the organisation, for the benefit of the organisation, or where prescribed by regulation.

Recent cases at a glance

Case	Plaintiff details	Cause of action	Injuries	General Damages	Total Damages
Hartfield v Calvary Healthcare ACT Ltd (No 4) [2025] ACTSC 488	Female	Medical negligence	Physical and psychological injury following rupture of ectopic pregnancy, rendering plaintiff unable to naturally conceive.	\$100,000	\$118,306
<i>Bye v Hend (No 2)</i> [2025] ACTSC 555	Female, 68	Occupier's liability	Electric shock from damaged light switch in rental property – plaintiff's evidence not accepted – judgment entered for the defendants.	Not applicable	Not applicable
<i>Meas (by his litigation guardian Adcock) v Tipping</i> [2026] ACTCA 12	Male, 10 months old	Motor vehicle accident	Serious bodily injuries and brain injury – plaintiff was a passenger in a car that was struck by another car, also causing death of his mother.	\$450,000 plus interest	\$5,877,193 plus interest
<i>Poole v Zagar</i> [2021] ACTSC 140	Female, 29	Motor vehicle accident	Neck, lower back and psychological injury following the plaintiff's car being struck from behind by another car.	\$90,000	\$157,277.54
<i>Costa v Goudappel & Anor</i> [2021] ACTCMC 7	Female, 67	Motor vehicle accident	Left shoulder injury – plaintiff was a passenger in a car involved in a collision with another vehicle. Plaintiff had underlying arthritic condition to her left shoulder and chronic pain.	\$20,000	\$31,122.25

New South Wales

Procedural rules and key dates

There are no regulated or mandated pre-litigation steps for general liability (personal injury) claims in NSW (this does not apply to personal injury claims arising from motor vehicle accidents or employment). A request for 'preliminary discovery' can be made under the *Uniform Civil Procedure Rules 2005* (NSW) (**UCPR**). This is usually done by way of letter to a relevant person requesting documents enabling a claimant to decide:

- if they should commence court proceedings; and/or
- who to sue.

If a request for preliminary discovery is not appropriately responded to, a claimant may:

- a. file an application in court requesting the respondent to provide the requested documents or information – this can have costs consequences; or
- b. simply commence substantive proceedings for damages in court.

For the court to make discovery orders in a personal injury case, it must be satisfied that the claimant has made 'reasonable enquiries' but was still unable to decide if or who to sue, and that there are 'special reasons' justifying an order for discovery (e.g. factual or legal complexity, or prejudice to the claimant if the order is not made).

Limitation periods

The timeframe for commencing court proceedings is regulated predominantly by the Limitation Act 1969 (NSW) (**Limitation Act**).

Where the injury or death occurs on or after 6 December 2002, the limitation period is ordinarily three years from when the cause of action is 'discoverable' by the claimant: (ss50C and 50D of the Limitation Act). Such an action may not be time barred where a lay claimant with limited skills is represented by solicitors who fail to prosecute a defendant within the relevant time (*Agrigrain Pty Ltd v Rindfleish* [2024] NSWCA 295).

For injuries occurring in the course of employment, the timeframe for commencing court proceedings against the injured worker's employer is ordinarily three years from the date of the injury except with 'the leave of the court' (s151D of the *Workers Compensation Act 1987* (NSW) (**WCA**)). Courts have historically favoured injured workers in applications for leave under s151D, and will often grant that leave in cases where, amongst other things, the worker's condition did not stabilise within three years to enable an assessment of the pre-requisite whole person impairment (**WPI**).

Actions arising from death or personal injury due to child abuse or dust inhalation have no limitation period.

Product liability

There are similar provisions under the *Consumer and Competition Act 2010* (Cth) (**CCA**), which is federal legislation, concerning concepts such as discoverability and the three-year post-discoverability limitation period (ss87F to 87K).

Assessment of damages

The assessment of damages for personal injury liability claims in NSW is predominantly governed by the *Civil Liability Act 2002* (NSW) (**CLA**) or the Federal CCA, whichever applies. The purpose of the damages is to put the injured person back in the position they were in before their injury. The High Court of Australia has clarified that assessments for future needs (e.g. care and assistance) should not necessarily be calculated with reference to the cheapest options or rates but rather to what is reasonable given the claimant's pre-injury circumstances (*Stewart v Metro North Hospital and Health Service* [2025] HCA 34).

If there is a degree of uncertainty as to whether or when an 'economic loss' will arise in future (or whether the loss will entirely be related to the injuries), the court may impose a percentage discount on the award of damages for expenses, assistance and income loss to account for that uncertainty. This is called a discount for the 'vicissitudes of life'; the standard discount is considered to be 15% but it may be less or more depending on each case (s13 of CLA; *Avopiling Pty Ltd v Bosevski* [2018] NSWCA 146).

Multiplier tables are used for future calculations, discounted at 5%.

Heads of damages

Non-economic loss

Damages for non-economic loss seeks to compensate for pain and suffering, loss of enjoyment of life, scarring and/or loss of life expectancy.

Non-economic loss is assessed by the court, with reference to comparable cases from the past, as a percentage of 'a most extreme case' and is based

on the way the claimant's injuries have impacted them personally. Non-economic loss damages (or general damages) are compensation for non-financial losses as a result of the personal injury, such as pain and suffering, loss of enjoyment of life, disfigurement and reduced life expectancy.

The CLA and CCA both prohibit awards for any injuries falling under 15% of a most extreme case and provide for differing monetary awards (at the time of judgment) corresponding with each percentage from 15% upwards as indexed each year (ss16 to 17A of the CLA; ss87L to 87T of the CCA).

In *AA v The Trustees of the Roman Catholic Church For the Diocese of Maitland-Newcastle* [2026] HCA 2, the High Court held that assessments of non-economic loss for historic sex abuse can be assessed under the CLA (as opposed to under common law) where a breach of an underlying duty of care by the defendant is found to have caused the abuse. This is distinct from cases where the defendant is merely found vicariously liable for the intentional/criminal acts of an employee or delegate where the prescribed amounts under s16 of the CLA would not ordinarily apply.

Past and future out-of-pocket expenses

A claimant is entitled to expenses reasonably incurred to the date of judgment due to their injuries (e.g. medical, hospital and travel etc.) as well as any expenses they will likely incur in future.

Amounts paid by Medicare and private health insurers are recoverable.

The future assessment will usually be guided by the expert medical evidence.

Past and future gratuitous and commercial domestic care and assistance

These payments seek to compensate:

- the claimant's family or friends for unpaid assistance provided or likely to be provided to the claimant based on average weekly earnings in NSW. This is known as "gratuitous" assistance. Both the CLA and the CCA prohibit awards of damages in this regard unless the assistance has been maintained or will be maintained at a minimum of six hours per week and for at least six consecutive months (s15 of the CLA; s87W of the CCA);
- the claimant's dependants to whom the claimant was providing gratuitous assistance, which was likely to continue but for the injuries. A similar threshold applies (i.e. a minimum of six hours per week and for at least six consecutive months but for the injuries (s15B of the CLA; s87X of the CCA); and
- the claimant directly for any expenses reasonably incurred or likely to be incurred in paying for professional assistance (which is calculated at a higher rate). This is known as 'commercial assistance'. There is no minimum hourly or monthly threshold for this award, but in terms of the future the claimant must be able to prove that gratuitous assistance will not reasonably be available to them in order to justify a court order for ongoing commercial assistance (*Miller v Galderisi* [2009] NSWCA 353).

The assessment will generally be guided by the opinions of Occupational Therapists who have expertise in this field (*Sampco Pty Ltd v Wruth* [2015] NSWCA 117) although there are instances where an Occupational Physician's opinion will be accepted (*Ray v Southon* [2022] NSWCA 267).

Past and future loss of income

These payments seek to compensate injured claimants for lost earnings from business or employment, depending on their residual income capacity.

The assessment, which is subject to differing statutory maximums under the CLA and the CCA, will generally be guided by expert medical evidence and the level of pre-and post-injury earnings shown from tax and other income records.

Awards for the future may be up to the statutory retirement age (i.e. 67) or an older age if the claimant establishes they had an intention to work beyond. Loss of superannuation is also compensable, usually at around 11% of the past net loss and around 14% of the future net loss.

Multiplier tables are used for future calculations, discounted at 5%.

Fox v Wood damages

This is the taxable amount paid by an injured worker on wages paid under the Workers Compensation scheme, and is recoverable if the Workers Compensation insurer is entitled to recover the gross amount paid to the worker (s151Z of the WCA).

Injured workers

Injured workers in NSW have access to a statutory scheme governed by the WCA and *Workplace Injury Management and Workers Compensation Act 1998* (NSW) (**WIM Act**). The scheme allows periodic payments for medical expenses incurred, lost wages and a one-off lump sum compensation depending on the percentage of the worker's Whole Person Impairment (**WPI**), provided the

injured worker's WPI is assessed at greater than 10% (i.e. 11% or higher) for physical injuries and, as at the date of this paper, 15% for psychological injuries (see below).

If an injured worker attains an undisputed 15% WPI or more for **physical** injuries, they are entitled to recover modified common law damages from their employer arising from negligence. This is called a Work Injury Damages (**WID**) claim (s151H WCA). However, under the *Workers Compensation Legislation Amendment Bill 2025* and *Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025*, the WPI threshold for WID claims for **psychological** injuries will increase from 15% to 25%. This is proposed to take effect from 1 July 2026, with gradual increases yearly thereafter.

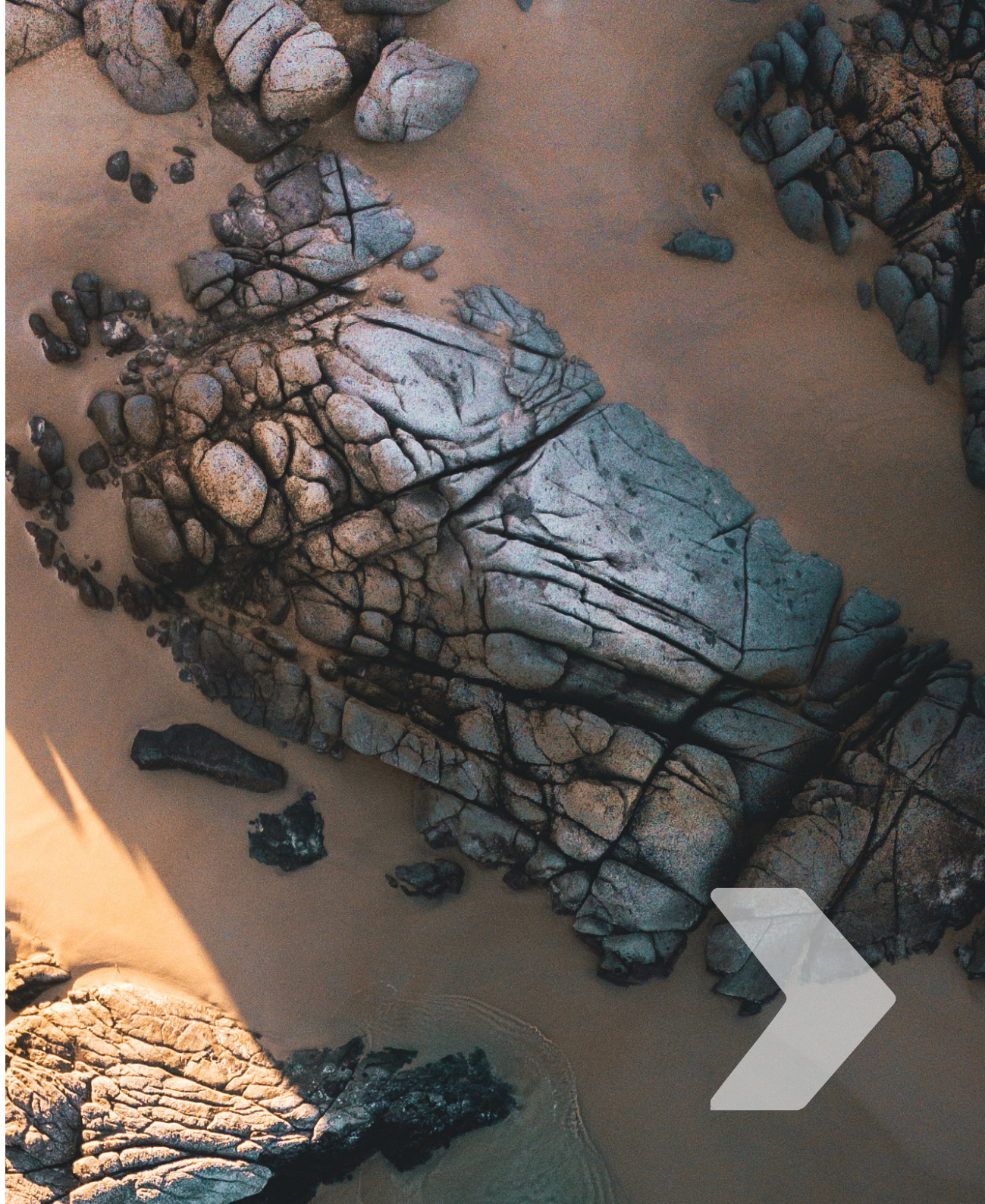
Section 151Z of the WCA enables the Workers Compensation insurer to recover the statutory benefits it has paid from any negligent third party. The following can happen:

- the employer (via the Workers Compensation insurer) can commence independent 151Z proceedings for recovery against the non-employer tortfeasor, even if the injured worker did not make a claim against the non-employer tortfeasor. The employer will need to prove the non-employer tortfeasor was negligent and the notional assessment of damages to the injured worker is equal to or exceeds the indemnity sought to be recovered;
- if the injured worker has attained the requisite WPI percentage, the employer may be joined to any proceedings commenced against the non-employer tortfeasor. Subject to all defendants being found to have a primary liability to the injured worker, the Court may apportion liability (and damages) between the employer and the

other defendants, noting an injured worker's entitlement to damages against their employer is restricted to modified common law damages (i.e. past and future economic loss damages, s151G WCA); and

- if the injured worker has not attained the requisite WPI percentage and has not sued the employer but has made a claim against the non-employer tortfeasor nonetheless, the non-employer tortfeasor's liability for damages may be reduced to reflect the percentage share of the absent employer's responsibility (s151Z(2) WCA).

In circumstances where the injured worker is entitled to pursue WID proceedings against their employer (i.e. the WPI threshold is satisfied) and does take proceedings against the employer, the extent to which the employer can recover the workers compensation payments pursuant to s151Z may be reduced. However, when paying any modified common law damages to the claimant, the employer still gets credit for wage payments previously made pursuant to s151A which operates independently of s151Z (see *South West Helicopters Pty Ltd v Stephenson* [2017] NSWCA 312; *Synergy Scaffolding Services Pty Ltd v Alelaimat* [2023] NSWCA 213; *Synergy Scaffolding Services Pty Ltd v Alelaimat (No 2)* [2024] NSWCA 11).



Recent cases at a glance

Case	Claimant details	Cause of action	Injuries	NEL Award	Total general damages awarded
Tazleem v Certain Underwriters at Lloyds Listed in Annexure "A" [2026] NSWSC 124	Male, 36	Public Liability	An excavator bucket weighing around 900 kg suddenly detached from forklift tines while the claimant was trying to remove it for repair, striking him. He suffered left elbow injury requiring surgery to repair ligament damage; neck injury with ongoing pain; associated left shoulder pain/restriction. Surveillance evidence undermined his claimed disability at trial, and his restrictions were found to be overstated.	25%	\$52,500
AA v The Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle [2026] HCA 2	Male, 69	Historic abuse	Historic abuse by a parish priest when the claimant was a secondary school student. He suffered persistent depressive disorder, polysubstance abuse disorder, mainly alcohol (in remission), recurrent periods of depression, and PTSD symptoms not sufficient for diagnosis. The High Court proceeded on the lower court's factual findings of serious ongoing psychological harm and poor quality of life.	34%	\$273,500
Ioannidis v Carretero [2025] NSWDC 258	Female, 54	Animal attack	An unrestrained dog attacked the claimant and her (smaller) dog in the street, biting viciously and wounding them both. She suffered PTSD and multiple lacerations/abrasions to the neck, chin, hands and limbs that largely healed. She also had very minor scarring. The court considered her psychological symptoms had been prolonged in part by the litigation and were likely to improve with further counselling.	25%	\$49,500
Bailey v Kmar Engineering Pty Ltd [2025] NSWSC 1266	Male, 48	Public Liability	A bundle of steel beams being unloaded by crane swung into the claimant, twisting and crushing his right leg . He suffered a crush injury to the right knee/lower leg with saphenous nerve damage, chronic right-leg pain and consequential left knee symptoms and lower back pain, persistent depressive disorder and chronic PTSD. The court referenced the continuous pain, permanency of the condition and its incurability, as well as the restrictions now imposed on the Claimant's work, recreational and sex life.	30%	\$185,000
Briggs v Hillier [2025] NSWSC 1021	Female, 41	Medical Negligence	The claimant alleged medical negligence arising from orthopaedic surgeon's performance of L5/S1 fusion in 1999. She lost on liability. In any event, the court found the evidence did not establish damage to the left facet joint, rejected a causal link between the surgery and alleged bladder symptoms, and found that the claimant's current symptoms reflected the natural course of the condition she already had in 1999, namely symptomatic grade 1 spondylolisthesis (vertebral misalignment). Secondary adjustment disorder with anxious/depressed mood was found to be partially caused by the lower back condition.	33% (notional)	\$251,500

Queensland

Procedural rules and key dates

A comprehensive pre-litigation procedure for personal injury claims is set out in the *Personal Injuries Proceedings Act 2002 (Qld)* (**PIPA**). Civil claims for damages, including whether there has been a breach of duty and certain restrictions on recoverable damages, are governed by the *Civil Liability Act 2003 (Qld)* (**CLA**).

Complying with PIPA is compulsory before commencing litigated proceedings for personal injury claims in Queensland, with some limited exceptions.

The purpose of PIPA is to promote the early resolution of claims without the need to proceed to litigation. PIPA provides the following key steps and timeframes:

Section 9

A claimant must serve a Part 1 Notice of Claim (**Notice**) within nine months of the injury or one month after first consulting a lawyer. A Notice can be served outside this time with a reasonable excuse for delay. Delay is not difficult for the claimant to overcome, absent prejudice to the respondent.

Sections 10 and 11

A respondent must confirm whether or not it is a proper respondent and identify any other parties that are proper respondents within one month of receiving the Notice.

Acknowledgement by a respondent that it is a proper respondent is not an admission of liability, only that it is the correct party to sue.

Sections 16 and 17

Any contribution / indemnity claim from a respondent is to be served by the later of three months of receipt of a complying Notice or seven days after a respondent identifies someone else as a contributor.

Contributors who are served with a contribution notice are to provide their response within one month after receiving a contribution notice.

Section 20

A respondent must provide written notice to the claimant stating whether liability is admitted or denied within six months of receiving a compliant Notice.

Sections 22 and 27

The parties must make full disclosure of all documents "*about the circumstances of, or reasons for, the incident*" or relevant to the claimant's injuries and loss.

Regarding disclosure required under PIPA, legal professional privilege is abrogated for certain classes of documents including investigation and medical reports (section 30(2), PIPA). They must be disclosed even if privileged. Evidence suggestive of fraud can also be withheld, but only after applying to the court *ex parte* for an order (section 30(3), PIPA).

Sections 36 and 39

Before litigation is commenced the parties must participate in a compulsory settlement conference. Any party may call a compulsory conference at an agreed time and place.

If the claim does not resolve under PIPA, each party must make a mandatory final offer (MFO), which must be considered by the court in respect of costs if the party achieves an outcome at trial better than its MFO.

If a claim fails to settle during the pre-litigation process, the claimant must file proceedings within 60 days after the conclusion of the compulsory conference. The *Uniform Civil Procedure Rules 1999* (Qld) (**UCPR**) will then apply to the proceeding.

When does PIPA not apply?

PIPA does not apply to:

- personal injury within the meaning of the *Motor Accident Insurance Act 1994* (Qld) and in relation to which that Act applies;
- injury within the meaning of the *Workers Compensation and Rehabilitation Act 2003* (Qld) (**WCRA**) and in relation to which that Act applies (i.e. where the respondent to the claim is the claimant's employer); or
- dust diseases.

Civil Liability Act

The CLA essentially codified the common law as it related to negligence. It introduced defences of obvious risk, inherent risk and risks of dangerous recreational activities, but these have rarely been upheld by the courts. A defence of voluntary assumption of risk has been maintained in the CLA.

The CLA also reverses the onus of proof regarding breach of duty in institutional abuse cases (i.e. once the claimant proves the abuse took place). The institution must prove it took all reasonable steps to prevent the abuse (sections 33D and 33E, CLA).

Property damage and other non-injury claims

Claims for property damage and economic loss are governed by the CLA and can be litigated pursuant to the UCPR without any pre-court process.

The CLA enshrined a system of proportionate liability for these claims which does not apply to personal injury claims (liability remains joint and several for personal injury).

Limitation periods

Claims for property damage and economic loss are governed by the CLA and can be litigated pursuant to the UCPR without any pre-court process.

The CLA enshrined a system of proportionate liability for these claims which does not apply to personal injury claims (liability remains joint and several for personal injury).

Dust disease and sexual abuse claims

Claims for personal injury cannot be brought after three years from the date on which the cause of action arose (section 11, *Limitation of Actions Act 1974* (Qld) (**LAA**)). The date the cause of action arose will usually be obvious – the date the injury occurred – but for latent injuries or those occurring over a period of time, the cause of action will usually arise on the date the claimant first experienced symptoms or sought medical treatment.

The claimant can obtain an extension of the limitation period if they identify a 'material fact of a decisive character' in relation to their cause of action (section 31, LAA). In that case, they have

12 months from when that fact came to their knowledge to commence proceedings.

Dust disease and sexual abuse claims

Claims relating to dust disease have no limitation period (section 11(2), LAA).

Claims relating to sexual abuse of a child have no limitation period (section 11A, LAA). The court can still order a permanent stay on a claim if the effect of the lapsed time on the respondent is so burdensome that a fair trial is not possible.

Limitation under PIPA

It is not uncommon for a claimant to commence a PIPA claim immediately prior to the expiry of their three-year limitation period. If this occurs, a claimant can obtain:

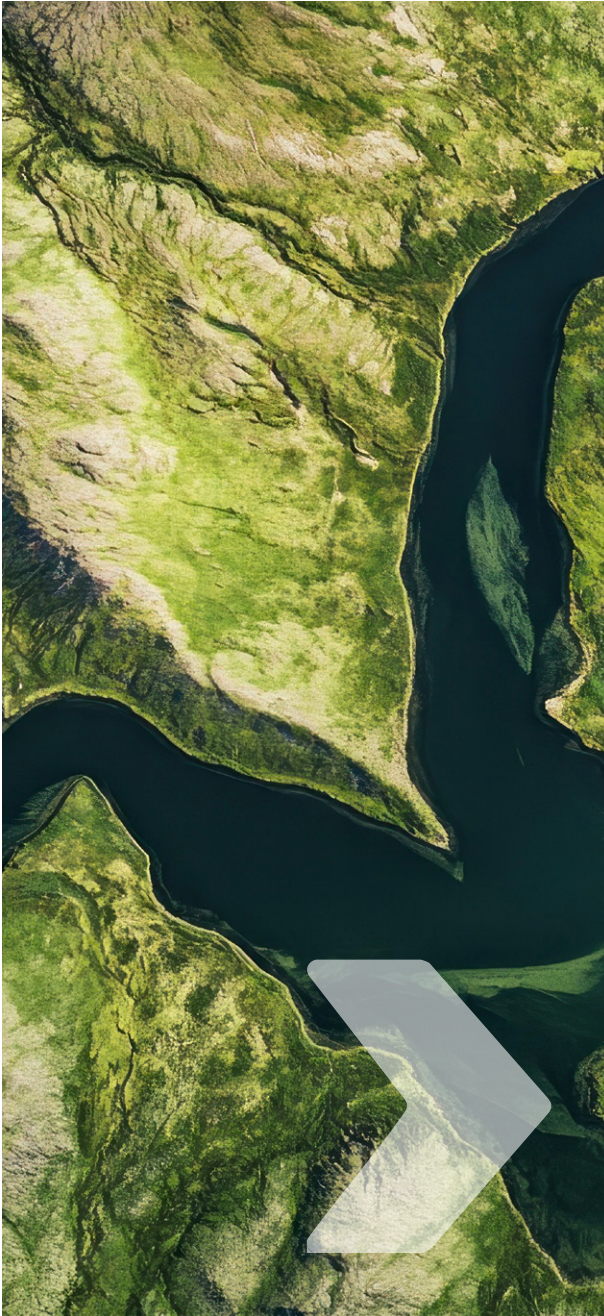
1. an extension of their limitation period (section 59, LAA), or
2. leave to proceed despite non-compliance with PIPA, with proceedings then stayed until PIPA is complied with (section 43, LAA).

A court order is required in either case, however respondents will typically consent in the absence of prejudice to avoid unnecessary costs.

Assessment of damages

There are several statutory restrictions and rules regarding the assessment of damages for personal injury claims in Queensland.

However, the underlying fundamental principle of damages assessment remains: damages are assessed to place the claimant in the position they would have been but for the harm suffered.



Heads of damages

General damages (pain and suffering)

Queensland has no threshold for general damages. Damages are assessed by assigning an 'Injury Scale Value' of 0-100 to the claimant's dominant injury, together with any uplift justified by additional injuries sustained: *Civil Liability Indexation Notice 2024* (Qld). The final ISV equates to an indexed sum of money (the current maximum as at 1 July 2025 is \$484,100).

If the WCRA applies to a claim – i.e. if the claimant's employer is also a respondent to the claim – the CLA and restrictions on general damages will not apply to non-employer defendants. General damages are assessed at common law based on prior similar decisions of the courts and are typically 20%-100% higher, though the difference varies significantly depending on injury type and severity.

Past and future special damages

These are direct expenses for treatment, rehabilitation and medication.

Past expenses are assessed by reference to evidence of expenses (receipts, and charge notices from Medicare Australia, WorkCover Queensland and private health insurers).

Future expenses are assessed by reference to medicolegal expert recommendations.

Past and future economic loss

This loss relates to direct and anticipated loss of earnings from employment due to the injuries sustained.

Past loss is evidenced through tax returns and payslips, by comparing earnings pre-and post-injury and ensuring any reduction in earnings is supported by medical evidence regarding the effect of the injuries sustained.

Future loss is evidenced by either:

- a calculation of mathematically calculable future lost earnings (i.e. the claimant has and will continue to lose a fixed sum per week due to their injuries); or
- a global allowance based on the general diminution of the claimant's earning capacity anticipated in the future based on the nature of the claimant's employment, their age and the anticipated effects of the injury as supported by the medico-legal expert evidence or other treating medical evidence.

Damages will also include interest on past and future loss of superannuation (presently 10.5%-11.5% on past and 11%-12% on future).

Past and future gratuitous or paid commercial care and assistance

Section 59 of the CLA applies a threshold for gratuitous care claims: the claimant must have experienced a need for care and assistance related to their injury of at least six hours/week for more than six months to recover any damages for care.

Once the threshold is met, all care requirements supported by the medico-legal evidence are recoverable.

If the WCRA applies to a claim (i.e. if the claimant's employer is also a respondent to the claim) the CLA and restrictions on care will not apply to non-employer respondents. Care will be recovered 'from the ground up'.

The section 59 threshold does not technically apply to claims for paid commercial care and assistance, but the courts have been disinclined to make substantial commercial care awards – past or future – without substantial evidence of past paid care being incurred by the claimant prior to trial. That might differ for a claimant who had no access to friends or family for assistance.

Gratuitous care is typically compensated at between \$45-\$55/hour. Paid commercial care and assistance is based on the evidence in a particular claim but is typically higher at between \$45-\$75/hour depending on the nature of the assistance.

Interest

Interest is not recoverable on general damages or gratuitous services provided to the claimant (section 60, CLA).

Fox v Wood damages

Recoverable where WorkCover Queensland has paid tax to the ATO on behalf of the claimant during the statutory workers' compensation claim. Those tax amounts are refundable to WorkCover if the claimant succeeds in their claim against the employer or a non-employer respondent, so they are recoverable in the claim.

Exemplary, punitive or aggravated damages

These damages cannot be awarded in a claim for personal injuries (section 52, CLA). That restriction does not apply to:

- intentional torts and unlawful sexual assault (section 52(2), CLA); or
- dust disease claims (the entire CLA is excluded by section 5(1)(c)).

Injured workers

The WCRA establishes the workers' compensation scheme for Queensland providing benefits for workers who sustain injury during the course of their employment including for dependants if a worker's injury results in death.

Statutory claim

If a worker sustains an injury at work, they are entitled to lodge a statutory ('no fault') claim with WorkCover Queensland for the payment of statutory benefits.

WorkCover will make payment of hospital, medical, rehabilitation and travel expenses and weekly benefits for lost wages (supported by ongoing certification from treating or independent medical providers). WorkCover has a statutory right to:

1. recover benefits paid if the injured worker receives damages for the injury from the employer or another entity (i.e. a negligence claim) (section 207B, WCRA). These benefits will form a part of the claimant's recoverable damages in any successful negligence action, and so will not be the subject of a separate recovery action against a PIPA respondent;
2. recover benefits paid directly from a party liable for the injury, if the claimant elects to not pursue a damages claim against that party by way of subrogation (section 207B(8), WCRA). Anecdotally, WorkCover rarely if ever exercises that right (likely because claimants almost always sue any potentially liable party themselves).

Common law claim

If an injured worker sues both their employer and a non-employer respondent for the same incident, apportionment of liability occurs in the usual way at law based on the respondents' respective fault.

However, if an injured worker sues a non-employer and elects not to sue their employer, the nonemployer respondent is prevented from joining the employer as a contributor or third party (section 237, WCRA and *Bonser v Melnacic* [2000] QCA 13).

The CLA is excluded from operation in relation to an injury subject to the WCRA (i.e. an injury sustained at work) (section 5, CLA). The exclusion of the CLA results in all damages being assessed against non-employer respondents at common, without the restrictions contained in the CLA (see 'Assessment of Damages' above).

Other notes

Present value of future losses

Future losses are usually calculated at a weekly rate and then discounted for present value of the future loss by using the 5% table of multipliers. This generally applies to future special damages, future economic loss, future care, and any other compensation for future losses.

Vicissitudes of life/contingencies

Future economic loss and care are typically discounted by a minimum of 15% for contingencies or the vicissitudes of life. This is a recognition by the court that some other factor in the future could have prevented the claimant from earning an income or rendered the claimant in need of gratuitous care and assistance even if the subject injury had not occurred (i.e. the claimant might have contracted a disease or some other injury that would have stopped them working or rendered them infirm).

The rate of discount may vary based on the claimant's personal circumstances (i.e. a prior degenerative medical condition) and the nature of the loss being compensated.

This is to offset the benefit the claimant could obtain by investing the lump sum amounts now and earning interest on the money before they actually require the amounts to pay for treatment or care, or to use as weekly income.

Recent cases at a glance

Case	Plaintiff details	Cause of action	Injuries	General damages	Total damages
<i>Anderson v Claytons Towing Service Pty Ltd</i> [2026] QSC 26	Male, 60	Public liability, Motor Vehicle Accident (CTP), Workplace Liability	Serious traumatic injury to his chest & secondary psychological injury – The plaintiff suffered significant injuries to his internal chest area when a bus he was attempting to attach tow ropes to (while laying underneath), came free from its chocks and came into contact with him. (Note, there was a dispute regarding which Act was applicable, and the Court found that the Motor Accident Insurance Act 1994 did not apply).	\$101,500 (against employer) \$110,000 (against non-employer defendant)	\$546,175.09 (against employer) \$1,970,874.41 (against non-employer)
<i>Habermann v Cook Shire Council</i> [2025] QSC 214	Female, 48	Workplace Liability	Psychiatric injury. The plaintiff sustained a psychological injury after she was a victim of a fabricated email during a dispute between her and the employer. ISV of 25 is assessed (no allowance for uplift).	\$49,650	\$2,359,037.64
<i>Bauer v Clay & Anor</i> [2025] QSC 114	Male, 22	Motor Vehicle Accident (CTP)	Soft tissue musculoligamentous sprain/ strain injury to the cervical spine. The plaintiff was injured when his vehicle was struck by another vehicle that was being pursued by police. ISV of 10 assessed (25% uplift).	\$24,370	\$602,008.14
<i>Forostenko v Springfree Trampoline Australia Pty Ltd</i> [2024] QSC 1 (24 June 2024)	Male, 48	Public liability Australian Consumer ACL claim	Fifth metatarsal fracture (foot fracture) & secondary psychological injury - The plaintiff injured his right foot whilst jumping on a Springfree trampoline. ISV of 12 assessed (allowing an uplift for the secondary psychiatric injury). (Note judgment was overturned on liability grounds on appeal).	\$20,270	\$744,175
<i>Ruvuta v Jaderberg & Anor</i> [2024] QDC 107	Male, 26	Motor Vehicle Accident (CTP)	Right knee meniscal tear and surgical scarring (and other minor injuries to elbow, wrists, ankle and hip that have resolved) – The plaintiff was struck by a vehicle whilst riding his bike. ISV of 7 assessed (no allowance for uplift).	\$11,600	\$124,456.89
<i>Carey-Schofield v Hays & Civeo</i> [2024] QSC 60	Male, 45	Workplace Liability	Elbow (comminuted fracture of the distal left radius) – The plaintiff tripped over a garbage bag at host employer’s accommodation village after being startled by a wasp. ISV of 20 assessed (allowing uplift for psychiatric injury).	\$37,950 (against employer) \$70,000 (against non-employer defendant)	\$503,595.51 (against employer) \$873,014.08 (against non-employer)
<i>Sawyer v Steeplechase Pty Ltd</i> [2024] QSC 142	Male, 34	Workplace Liability	Lumbar Spine - Plaintiff injured during the course of his employment as a concreter carrying steel mesh sheets at a residential renovation project. ISV of 19 assessed (including 25% uplift for psychiatric injury).	\$34,030 (against employer) Plaintiff not successful as against non-employer. GD's assessed at \$80,000.	\$781,082.09
<i>Wilson v Gold Coast Hospital and Health Service</i> [2023] QSC 135	Female, 47	Workplace Liability	Back injury and secondary psychiatric injury – Plaintiff injured during the course of her employment as a registered nurse when attempting to restrain a patient. ISV of 20 assessed (allowing uplift for psychiatric injury).	\$25,150	\$1,634,418.55
<i>Dearden v Ryan</i> [2022] QSC 111	Male, 24	Occupier’s Liability	Right shoulder, burns and scarring – Plaintiff suffered severe burns to his upper body and limbs when he attended a friends birthday party when another guest (third party) deliberately poured petrol on his clothing while he slept and then set it alight. Crow J apportioned 70% of liability to third party ISV of 38 assessed (allowing 25% uplift).	\$95,670	\$600,797.55

South Australia

Procedural rules and key dates

The *Uniform Civil Rules 2020 (SA)* apply to all actions issued in the Supreme, District and Magistrates Court. The Rules require parties to attempt to resolve disputes before the commencement of litigation and often involve insurers at an early stage.

The key pre-action steps are set out below.

The Rules require claimants to give early notice of personal injury claims. A claimant must within six months of the day on which the incident occurred (or within one month after becoming aware that the injury was caused by the negligence of a person), serve a potentially liable person with a written notice of injury that identifies the injured person's details, circumstances of the injury, why the person is potentially liable and identifying medical records required.

A recipient of an early notice of injury must, within six weeks, serve a written response:

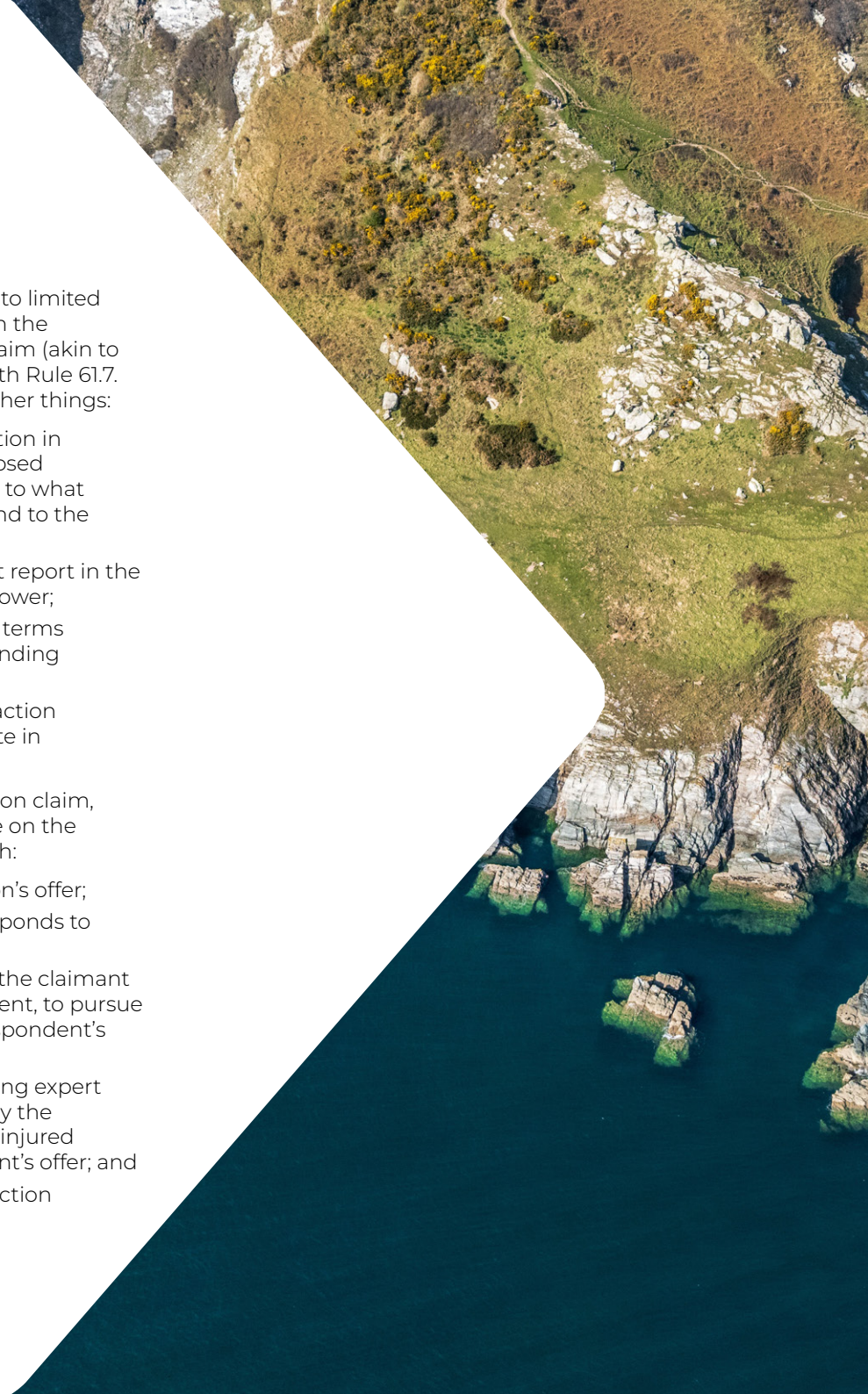
- setting out the recipient's address for pre-action service;
- providing a copy of any requested medical records in their possession, custody or power;
- setting out suggestions for next steps (for example, further investigation, obtaining expert evidence, negotiation, alternative dispute resolution or an invitation to institute a proceeding).

Prior to issuing proceedings (subject to limited exceptions), a claimant must serve on the proposed respondent a pre-action claim (akin to a formulated claim) that complies with Rule 61.7. This written notice must, amongst other things:

- identify each proposed cause of action in sufficient detail to enable the proposed respondent to decide whether and to what extent to admit the claim, to respond to the claim and to respond to the offer;
- attach a copy of any relevant expert report in the claimant's possession, custody or power;
- make an offer to settle the claim in terms capable of giving rise to a legally binding agreement if accepted;
- propose a date and time for a pre-action meeting at which parties participate in settlement discussions.

Within 30 days of receiving a pre-action claim, the proposed respondent must serve on the claimant a pre-action response, which:

- accepts or rejects the injured person's offer;
- as far as reasonably practicable, responds to each identified cause of action;
- provides sufficient detail to enable the claimant to decide whether, and to what extent, to pursue the claim and to respond to the respondent's offer;
- attaches sufficient material (including expert reports and medical records held by the respondent) as is necessary for the injured person to respond to the respondent's offer; and
- confirms the suitability of the pre-action meeting details.



A pre-action meeting (settlement negotiation) is to be held within 21 days after the time for service of the last pre-action document (or as agreed by the parties). Absent agreement, the meeting is to be face to face, however the parties can agree to have a telephone meeting or video meeting. The parties are to negotiate in good faith, identify the main issues in dispute and primary cause of disagreement and how the issues may be resolved without recourse to litigation.

The Rules provide cost consequences for non-compliance with the pre-action steps, including the applicant not being entitled to recover the costs of preparing, filing or serving the Claim.

The applicant must certify on the Claim whether the pre-action steps have been complied with. If there is non-compliance with pre-action steps (by either party), a special directions hearing will be listed by the Court at which time the Court may make such orders as it sees fit including ordering that any pre-action step or steps in lieu be taken, staying other steps in the proceeding, making orders for ordinary steps in the proceeding to be taken or making orders for costs.

The usual rule is that the party in default pays the costs of the other parties' attendance at the special directions hearing and costs thrown away by reason of the default on an indemnity basis forthwith.

The Courts have further discretion to take non-compliance into consideration when making cost orders after the final determination of the matter.

Limitation periods

The *Limitation of Actions Act 1936* (SA) provides that actions in respect of personal injury must be commenced within three years of the cause of action accruing.

If the injury remains latent for some time after its cause, the three-year time period begins to run when the person becomes aware of the injury.

The courts have the discretion to extend that limitation period when:

- the action is commenced within 12 months of the applicant ascertaining previously unknown "*facts material*" to his or her case; or
- the failure to commence the action within time was due to the respondent's representations or conduct; and
- the court is satisfied that in all the circumstances of the case it is "just" to grant the extension of time.

There is no limitation period for an action for damages relating to personal injury resulting from the abuse of a person when the person was a child.



Assessment of Damages

General damages

Damages for non-economic loss may only be awarded if:

- the injured person's ability to lead a normal life was significantly impaired by the injury for a period of at least seven days; or
- medical expenses of at least the prescribed minimum (\$5,290 as at September 2025) have been reasonably incurred in connection with the injury.

Damages are assessed by assigning a numerical value between 0 – 60 to the injury depending on its type, nature and severity. The numerical value equates to an indexed sum of money based on the year in which the injury was sustained.

The maximum amount of damages that can be awarded for an injury occurring in 2026 (injury worth 60 points) is \$449,800.

Economic loss

An award of damages for past and future economic loss involves an assessment of what the injured person would have earned but for the accident. Damages can be calculated by way of a mathematical calculation (based on net weekly loss) or on a more global basis considering an injured person's work skills and earnings history, tax returns, payslips and workers compensation records (where relevant).

Section 54 of the *Civil Liability Act 1936* (SA) (**CLA**) provides that no damages are payable for the first week of incapacity.

Where future economic loss is calculated by reference to a net weekly loss, it is discounted for present value by using a multiplier with a

discount rate of 5% before a further adjustment for contingencies (usually 15%) depending on the personal circumstances of the injured person.

Damages are not to exceed the prescribed maximum (\$4,229,180 as at September 2025).

Superannuation

Awards for past loss of superannuation are based on the relevant superannuation guarantee rate at the time of the loss:

Pre-30 June 2021 9.5%
1 July 2021 – 30 June 2022 10%
1 July 2022 – 30 June 2023 10.5%
1 July 2023 – 30 June 2024 11%
1 July 2024 – 30 June 2025 11.5%

Future loss of superannuation is commonly assessed at 12%, being the superannuation guarantee rate from 1 July 2025. Past and future gratuitous and paid care

Awards of damages for gratuitous care or paid care are based on services that are reasonably required by the injured person, usually based on expert medical opinion.

Section 58 of the CLA limits an award of damages for gratuitous care to those services provided by a parent, spouse, domestic partner or child of the injured person.

Damages for gratuitous services are not to exceed an amount that is four times the state average weekly earnings (currently \$7,740 (4 x \$1,935)).

Paid care is assessed based on what services are reasonably required having regard to the expert medical evidence and is allowed on commercial rates.

The decision of *Amaca Pty Ltd v Werfel* [2020] SASCFC 125 limits the services that are considered compensable to those provided for the benefit of

the injured person and not those provided for the benefit of the household.

Medical expenses

Damages for past and future medical expenses are awarded on the basis of the necessity or reasonableness of the medical, rehabilitation and pharmaceutical expenses having regard to expert medical opinion.

Amounts paid by Medicare are recoverable from settlement sums or judgments over \$5,000. A private health insurer may also seek reimbursement of amounts it has paid for treatment.

Consortium

Other than in the case of catastrophic injuries, damages in the amount of \$5,000 – \$10,000 are commonly allowed for the loss or impairment of consortium suffered by a spouse or domestic partner of the injured person.

We note that the recent judgment of *MAC v Raccanello & Ors* [2025] SASCA 146 allowed \$25,000 for loss of consortium where the applicant suffered significant injuries (reduced from \$50,000 on appeal).

Solatium

Damages payable for solatium for the suffering caused to the spouse or domestic partner of a deceased person are capped at \$10,000.

Interest

No interest is payable on non-economic loss.

Other notes

No amounts are payable for the costs of investment or management of damages.

Injured workers

The *Return to Work Act 2014 (SA)* (**RTWA**) establishes the workers' compensation scheme for SA providing benefits for workers who sustain injury during the course of their employment including for dependents if a worker's injury results in death.

Statutory claims for a workplace accident

If a worker sustains a workplace injury in SA, they are entitled to lodge a claim for compensation through ReturnToWorkSA (or, in the case of an exempt employer, their employer). The injury must arise from employment that is connected with SA.

The RTWA differentiates between injured workers and 'seriously injured workers' (being a worker who has been assessed as having a permanent whole person impairment (**WPI**) of at least 35% for physical injuries and 30% for psychiatric injuries).

An injured worker (not a 'seriously injured worker') is entitled to income maintenance for only two calendar years from the date of first entitlement to weekly payments. For the first 52 weeks the worker is entitled to 100% of the difference between their average weekly earnings rate and the amount earned, if any, and for the next 52 weeks 80%.

After two years, a 'seriously injured worker' is entitled to 80% of the difference between their average weekly earnings and any earnings, until retirement age or they can elect to receive a once-off lump sum payment for economic loss instead of ongoing weekly payments (known as a redemption).

A worker's entitlement to medical and like expenses ends one year after returning to work or one year after ceasing to receive weekly payments of compensation. This limit does not apply to 'seriously injured' workers.

Effects of RTWA

Return to Work SA has a statutory first charge on any compensation payable to the worker by another entity ('the wrongdoer').

The RTWA prohibits workers from suing their actual employer except where the worker is 'seriously injured'. An action brought by a 'seriously injured' worker against their employer is limited to damages for economic loss only. There may be little incentive for a 'seriously injured' worker to sue an employer for economic loss damages because the worker can remain on weekly compensation payments set at 80% of their pre-injury earnings until retirement, or choose to redeem those payments for a lump sum.

If the worker elects to sue his or her employer at common law, those weekly payment entitlements are terminated on receipt of any award of economic loss damages.

Accordingly, ReturnToWorkSA recoveries are often pursued at the same time the worker brings a common law damages claim against a non-employer respondent.

In cases where the worker sues a non-employer respondent at common law, there are statutory restrictions imposed on the non-employer respondent (wrongdoer) pursuing contribution from the employer.

Recent cases at a glance

Case	Plaintiff details	Cause of action	Injuries	NEL Award
<i>Clutterbuck v Pollifrone</i> [2021] SADC 15	Female, 52	Negligence	Knee and psychiatric – the plaintiff was visiting the respondent's farm and was injured when conveyor belts fell from the forklift the respondent was using and pinned her to the ground. The plaintiff experienced symptoms consistent with complex regional pain syndrome. She reported suffering from depression, anxiety, agoraphobia and cognitive impairment.	\$48,354.50
<i>Amaca Pty Ltd v Werfel</i> [2020] SASCF 125	Male, 44	Negligence (dust disease)	Plaintiff diagnosed with a rare form of testicular mesothelioma diagnosed at age 40. Plaintiff alleged to have been exposed to asbestos from products manufactured by James Hardie while employed as a fencing contractor retained by the South Australian Housing Trust between 1994 and 1997 and again while undertaking home renovations in 2000, 2001 and 2004.	\$280,000 (note: not governed by Civil Liability Act)
<i>Paues v Battunga Country Lions Club</i> [2020] SADC 162 (P2's determination) <i>Battunga Country Lions Club v Paues</i> [2021] SASCA 72 (P1's appealed determination)	P1 – Male, 36 P2 – Female, 33	Occupiers' liability	Upper extremity, neck back and knee – the plaintiffs were husband and wife spectators at a go-kart race and were hit by an out-of-control go-kart that broke through the bunting at the edge of the track. The first plaintiff sustained a right knee injury. The second plaintiff sustained upper extremity (shoulder, elbow, wrist hand and thumb), neck, back and right knee injuries.	P1 \$40,580 P2 \$21,850
<i>Sloan v Service Stream Limited</i> [2020] SADC 98	Male, 48	Negligence	Lower back and psychiatric – the plaintiff was employed by a labour hire company and undertook pit and pipe work associated with the installation of the NBN. The defendant attempted to lift a P9 pit when he sustained a back injury. He had a significant pre-existing back condition.	\$13,770
<i>Corso v Arias Holdings Pty Ltd & Ors</i> [2016] SADC 62	Female, 36	Negligence	Nerve damage, scarring, disfigurement, psychiatric – the plaintiff underwent tattoo removal treatment with a paste that caused up to third degree burns on her ankle and back.	\$74,430

Tasmania



Procedural rules and key dates

Civil procedure in Tasmania is governed by the *Supreme Court Rules 2000* (Tas) and the *Magistrates Court (Civil Division) Rules 1998* (Tas), which contain similar procedural rules and provide timeframes to respond to civil actions. The following paragraphs focus on the *Supreme Court Rules 2000* (Tas).

An action is commenced by the filing of a Writ in the registry which is to be served on the defendant(s) to the proceeding within six months after the filing of the Writ.

On application by the plaintiff made whilst the Writ is valid, a court may order that the original Writ and any concurrent Writ be renewed for a period the court deems fit if the defendant has not been served with the Writ. A defendant must file a Notice of Appearance within 7 days of being served with the Writ. If the Writ is accompanied by a Statement of Claim, the defendant has 21 days to file a defence in response to the Statement of Claim.

If the Writ is not accompanied by a Statement of Claim, the plaintiff has 21 days after the defendant has filed a Notice of Appearance to serve a Statement of Claim. A defendant then has 21 days after service of the Statement of Claim to file a Defence.

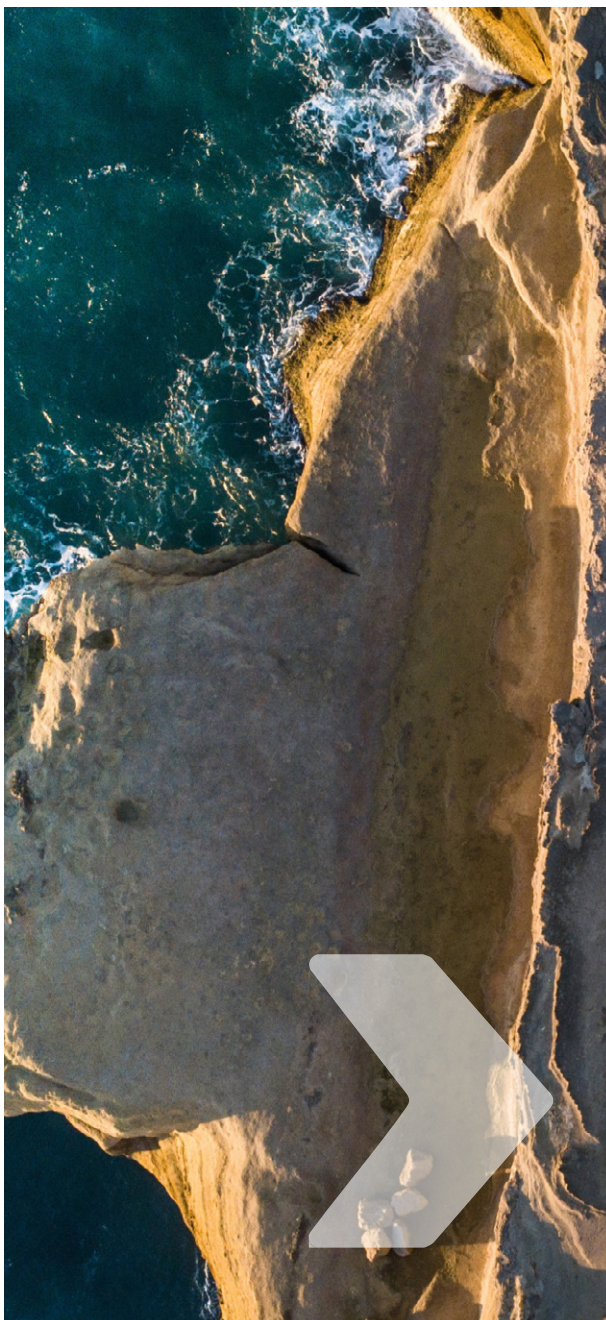
In an action for damages for personal injuries, the plaintiff is to advise the defendant(s) in writing within 50 days after the close of pleadings or otherwise agreed or ordered, the following (which is referred to as particulars of claim):

- the nature of the injuries
- any secondary illnesses

- the name of each hospital and medical practitioner attended as a result of the injuries expenses incurred due to the injuries
- the nature of employment or self-employment that the plaintiff would have been engaged in or was likely to have been engaged in but for the injuries
- estimated gross annual income, and
- whether the claim is that the injuries totally or partially impacted the plaintiff's earning capacity.

Personal injury matters are not subject to any automatic court-imposed timetabling and instead the progression of the litigation is largely directed by the parties. Conversely, non-injury matters are automatically listed for a directions hearing before the Court following the filing of a Defence.

A party to an action, may request another party, at any time after the close of pleadings, but before the filing of the certificate of readiness or the making of an order, that the action be set down for trial (whichever comes first), to make discovery within 14 days from the notice (or any other time period agreed between the parties or allowed by the court). If a party wishes for the discovery to be verified by affidavit, the party making the discovery request must specify the same. A party may make an application to the court for an order that another party make discovery. A failure to provide discovery can result in an order that the action be dismissed or judgment entered. A defendant in an action involving a motor vehicle accident is not required to make discovery unless ordered by the court.



A solicitor acting for a party is unable to witness an affidavit sworn or affirmed by their own client.

During the course of the proceeding the court may refer the parties to mediation in an attempt to resolve the action. If the matter does not resolve at mediation the plaintiff must give a report to the court outlining that the mediation occurred and setting out the issues left to be determined (although in practice the plaintiff usually applies to the court for directions or a timetable towards trial) The action may also be referred to mediation at the consent of the parties.

Before trial, the parties must file a certificate of readiness with the court. The parties must specify that they have attended a compulsory conference including attempting to reach agreement on as many issues in dispute as possible and certifying that they have canvassed the possibility of settlement of the action.

An offer of compromise is to be open for a period no less than 14 days. If there are multiple defendants to an action, and contribution proceedings have been issued, a defendant cannot make an offer of compromise to the plaintiff independently of the other defendant/s.

A plaintiff is entitled to a costs order against a defendant taxed on a solicitor-client basis if, the plaintiff made an offer of compromise which was not accepted by the defendant at the time of judgment, and the judgment is no less favourable to the plaintiff than the terms of the offer.

Limitation periods

The *Limitations Act 1974* (Tas) provides that actions in respect of personal injury must be commenced within three years of the date of discoverability.

The courts have discretion to extend that the limitation period to six years from the date of discoverability when it is just and reasonable to do so.

There is no limitation period for an action for damages relating to personal injury arising from or related to the sexual abuse or serious physical abuse of the person when the person was a minor.

Actions may be brought against previously settled causes of action arising from or related to the sexual abuse or serious physical abuse of a minor if a court decides it is in the interests of justice to set aside the settlement agreement.

A court may consider any amount paid under a previous agreement even if the previous agreement is found to be wholly or partly void, if it is satisfied that it is just and reasonable to do so when awarding damages in a hearing of an action on a previously settled cause of action arising from or related to the sexual abuse or serious physical abuse of a minor.

Actions founded in contract, tort and breach of statutory duty must be brought within six years from the date upon which the cause of action arose.

There are adjustments to the limitation periods where the claimant is a person with a “disability”; for example, if the claimant is a child, the limitation period does not start to accrue until the claimant turns 18.

Assessment of damages

General damages

An annual government gazette sets out indexed amounts for non-economic loss under the *Civil Liability Act 2002* (Tas) (CLA).

In calculating general damages, the CLA refers to an Amount A and an Amount B. As of 1 July 2025, Amount A is \$7,000 and Amount B is \$35,000, which is five times Amount A.

If the assessed amount of non-economic loss is less than Amount A, then no damages will be awarded for non-economic loss.

If the assessed amount of non-economic loss is between Amount A and Amount B, Amount A is subtracted from the assessed amount, and the result is then multiplied by 1.25.

If the assessed amount of non-economic loss is more than Amount B, then the damages awarded equals the assessed amount. There is no cap on the assessed amount of non-economic loss.

In assessing damages for non-economic loss, a court may refer to previous decisions of that court or other Australian courts to establish the appropriate amount to be awarded.

Pre-judgement interest was introduced in 2019 by way of amendment to the *Supreme Court Civil Procedure Act 1932* (Tas). The amendment allows the court, when making a judgment requiring the

payment of an amount of money, to order that the amount, or part of the amount, carries interest from the day after the cause of action arose and ending on the day on which judgment is entered. The interest rate from 1 January 2026 is 7.60%.

Gratuitous care

The CLA provides that a person may not recover damages for gratuitous services unless the services have or will likely be provided to the injured person for more than six hours per week and for more than six consecutive months.

In calculating damages for gratuitous services:

- the hourly rate is not to exceed one fortieth of adult average weekly earnings, and
- the weekly rate is not to exceed adult average weekly earnings.

An individual who was providing gratuitous services to another person prior to injury can claim for the loss of capacity to provide those services, providing that before the loss of capacity occurred:

- the person was providing the services to the other person for more than six hours per week and for more than six consecutive months and it was necessary for the services to be provided to the person; or
- the other person was an unborn child of the person before the injury occurred.

Gratuitous services are not recoverable in claims involving motor vehicle accidents. Where a claimant does not satisfy the threshold requirements for a gratuitous services claim, the claimant will often attempt to categorise the claim as a claim for paid domestic services instead.

Economic loss

Damages for economic loss – i.e. loss of earning capacity/income are governed under the CLA.

Relevantly, section 26 of the CLA provides that a court must not award damages for loss of earning capacity that exceeds 3 x average weekly earnings of an adult, as last published by the Australian Bureau of Statistics before damages are awarded.

Damages for loss of superannuation entitlements is also restricted by section 25 of the CLA which limits loss to the “relevant percentage” of damages payable for the deprivation or impairment of the earning capacity on which the entitlement to contributions is based. Relevant percentage is defined in the CLA to be the percentage of earnings that is the minimum percentage required by law to be paid by the person’s employer as contribution to the person’s superannuation.

In cases involving consequential mental harm, section 35 of the CLA provides that a court cannot award damages for economic loss resulting from a breach of duty, unless the harm consists of a recognised psychiatric illness.

Intoxication and contributory negligence

If a plaintiff is found to have been intoxicated to the extent that their capacity to exercise due care and skill was impaired, a mandatory deduction of 25% or a percentage the court considers appropriate is applied to the assessment of damages. The onus is on the plaintiff to satisfy the court that damages should be reduced by a percentage less than 25%.

Injured workers

The *Workers Rehabilitation and Compensation Act 1988* (Tas) (**WRCA**) establishes the workers’ compensation scheme for Tasmania which provides benefits to workers who sustain injury during the course of their employment including for dependents if a worker’s injury results in death.

Statutory claims for a workplace accident

A worker is entitled to pursue a claim for compensation if he or she suffered an injury in the course of employment or contracted a disease which his or her employment contributed a substantial degree to.

If the injury to the worker resulted in death, an employer may be liable to pay compensation to the worker’s dependents who, at the date of death, would have been the worker’s dependents but for the injury.

An injury does not arise from a worker’s employment merely because it occurs whilst the worker is travelling between his or her residence and the place of employment unless that journey occurred at the request or direction of the employer.

Compensation claims are not payable for illnesses of the mind arising from demotions, workplace discipline and failure to award promotions.

There are certain presumptions in the WRCA including, for example, a provision that where a state or government worker suffers post-traumatic stress disorder, the worker’s employment is taken to have contributed a substantial degree to that injury in the absence of contrary evidence.

The injured worker must give notice of the injury to his or her employer as soon as practicable after the injury occurs and must make a claim for compensation within six months after the

injury. There are exemptions to that requirement for certain conditions including, for example, the suffering of silicosis, dermatitis or lead poisoning by a mining employee.

Once notified of an injury, an employer must inform the worker within 14 days that the worker may have a right to a claim for compensation in relation to the injury.

If an employer receives a claim for compensation from a worker, then the employer or the employer’s insurer must, within 28 days: notify the worker as to whether liability for the injury is accepted, and if no decision is made to accept or dispute liability for the injury, the employer or employer’s insurer must specify the reasons why a decision has not been made and the steps to be taken to reach a decision.

An employer who wishes to dispute liability to pay compensation must within 84 days serve the worker with a written notice advising that it disputes liability, inform the worker of its reasons for doing so, and refer the matter to the Tribunal.

If a worker is totally incapacitated, and that incapacity is supported by a certificate of a medical practitioner, their weekly payments of compensation are equal to the greater of:

- the worker’s normal weekly earnings;
- the ordinary time rate of pay of the worker for the work and hours during which the worker was engaged immediately before the incapacity. This is made up of weekly payments for the period of incapacity which equals the difference between the worker’s normal weekly payments and the amount that the worker is earning or would be able to earn in suitable employment during the period of incapacity.

The weekly payments are payable as follows:

- 100% of the weekly payment for the first 26 weeks post-incapacity;
- 90% (or 95% if other factors as specified in the WRCA apply) of the weekly payment for weeks 27–78 post-incapacity, and
- 80% (or 85% if other factors as specified in the WRCA apply) of the weekly payment for week 79 post-incapacity but not exceeding nine years from the date of incapacity if the worker's impairment is less than 15% whole person impairment, with further increases to the proposed duration of compensation payments depending on the whole person impairment assessment.

A worker who suffers permanent impairment assessed at less than 5% **WPI** (whole person impairment) (save for the loss of a finger or toe in part or in whole) is not entitled to compensation for permanent impairment.

A worker deemed to have suffered permanent impairment between 5-70% is entitled to compensation in accordance with the following formula: $\{18 + [6.1 \times (WPI - 5)]\} \times BS$

WPI is the percentage of whole person impairment and BS is the basic salary.

The above formula also applies to permanent psychiatric impairment assessed between 10 – 70%.

A worker who suffers a WPI of 20% or higher for an injury that occurred on or after 1 July 2010 may be entitled to pursue common law damages. The CLA does not apply to a common law claim brought by a worker against an employer. As a result, particular limitations on damages within the CLA do not apply to a common law assessment of this kind and further, the 3% deferral tables (as opposed to the 5% deferral tables under the CLA) apply.

Effects of RTWA

A worker's outstanding entitlement to compensation under the WRCA may only be settled by entering into a settlement agreement pursuant to which the worker agrees that all further claims to compensation are extinguished.

If a worker enters into a settlement agreement in relation to all outstanding entitlements to compensation within two years of the date the claim was made, the agreement must be approved by the Tribunal, taking into account factors including whether all reasonable steps have been taken to rehabilitate or retrain the worker and whether the worker has returned to work. A settlement agreement entered into after two years since the claim was made does not have to be approved by the Tribunal but may be referred to the Tribunal for review.

The payment of or entitlement to the payment of compensation in relation to an injury does not impact a worker's right to obtain damages in respect of that injury. However, where a liability has been incurred by an employer or other individual for the payment of damages to the worker, the payment of compensation shall be regarded as payment towards the discharge of that liability and will be set off against the amount of damages awarded.

If a worker's injury arises, in part, due to his or her own fault, the amount recoverable by the employer by way of indemnity or contribution is reduced to an extent that the Supreme Court of Tasmania considers just and equitable having regard to the degree of responsibility the worker had for the injury.

In circumstances where the injury to the worker creates a liability in a person other than the employer, the employer may seek to pursue indemnity or contribution from that other person in respect to the compensation paid to the injured worker.

Recent cases at a glance

Case	Plaintiff details	Cause of action	Injury	Total General Damages Awarded
NV v State of Tasmania [2026] TASSC 12	Female, 61 at time of judgment	Negligence and assault and battery	Psychiatric injuries (complex PTSD and borderline personality disorder) – plaintiff was sexually abused by a teacher at her school from the age of 16 years.	Award of \$275,000 not including an award for aggravated damages of \$150,000 and an award for exemplary damages of \$200,000
Carleton v National Spiritual Assembly of the Baha'is of Australia Inc [2025] TASSC 11	Female, 59	Negligence	Physical injuries to right arm and hip, left side of her neck all the way down to the plaintiff's shoulder blade – the plaintiff fell from a single step leading from the side of a stage while attending a work conference. The step was no fixed to the floor or the stage.	\$90,000
Garling v Patiniotis [2024] TASSC (affirmed in Patiniotis v Garling [2025] TASFC 5 (12 June 2025))	Female, 58	Medical Negligence	Negligent performance of a stapled haemorrhoidectomy causing pain and affecting the operation of the plaintiff's bowels and gastrointestinal system.	\$75,000
Munting v Pollard [2024] TASSC 30	Female, 42	Negligence and battery	Psychiatric injuries (complex PTSD) - the plaintiff was sexually abused by a teacher at her school from age 15 for approximately one year.	\$275,000 including aggravated and exemplary damages (plus interest of \$34,375)
Steen v Trustees of the Diocese of Tasmania [2024] TASSC 3	Male, 53	Negligence	Psychological injuries – plaintiff sexually abused from age 10 to 16.	\$275,000 plus exemplary and aggravated damages (plus interest of \$126,160 awarded on general damages, aggravated damages, past economic loss, and past medical expenses)
Public Trustee as Administrator of the Estate of Matthew Leonard v Atileo [2023] TASSC 33 (affirmed in Atileo and Anor v Public Trustee [2026] TASFC 6)	Male, 28	Negligence and battery	The plaintiff was ejected from a nightclub. After returning to the nightclub, he proceeded to punch the Defendant who responded with force. This caused the plaintiff to fall and sustain a traumatic brain injury. When assessing the damages, the Supreme Court considered the plaintiff's intoxication and aggressive behaviour, in addition to the severity of his physical and cognitive disabilities.	Total damages awarded of \$12,490,640 (after 20% reduction for contributory negligence) (inclusive of interest and administration costs). General damages were assessed at \$350,000 (prior to reduction)

Scattergood v Commonwealth [2022] TASSC 21	Female, 46	Negligence	Physical whiplash injuries and psychiatric injuries (adjustment disorder with depressed mood) – the plaintiff was injured in a motor vehicle accident with the injuries exacerbated in a subsequent “incident” involving the sudden braking of the car she was a passenger in.	\$100,000
<i>Dann v Port Sorell Bowls Club Inc</i> [2020] TASSC 47; <i>Port Sorrell Bowls Club v Dann</i> [2022] TASFC 2	Male, 44	Negligence	Burns to hand, depression, anxiety, alcohol use disorder – The plaintiff was burnt when he was cooking sausages on the bowling club barbecue when the mug that was being used to catch the fat from the barbecue overflowed and caught fire. When the plaintiff attempted to move the mug it got caught on a bracket and the fat spilt on his hand resulting in burns. There was a 15% reduction for contributory negligence.	\$80,000
<i>ZAB v ZWM</i> [2021] TASSC 64	Male 10-16 at the time of incident (alleged abuse) and aged over 40 at trial	Assault and battery – sexual abuse	PTSD, depression – The plaintiff was sexually assaulted by his father from when he was 10 to 16 years old.	\$300,000 including aggravated damages (plus interest of \$67,500 awarded on general damages)
<i>Partridge v Hobart City Council</i> [2012] TASFC 3	Female, 40	Negligence	Back, knee and hand – plaintiff slipped on wet steps after leaving her solicitors’ office. There was a 20% reduction for contributory negligence.	\$40,000
<i>Dodge v Snell</i> [2011] TASSC 19	Male, 41	Negligence	Collarbone, shoulder, ribs, punctured lung and adjustment disorder – plaintiff was injured in horse race due to the allegedly negligent riding of another jockey (the defendant) causing the plaintiff’s horse to fall.	\$80,000
<i>Hall v Hall</i> [2014] TASSC 37	Male, 34	Negligence	Back, leg, neck and psychiatric – The plaintiff was in a vehicle being driven by his wife. As she attempted to overtake other vehicles, she lost control of the car which hit an embankment and rolled onto its roof.	\$45,000

Victoria

Claims in Victoria

In Victoria, most personal injury claims fall into one of two categories.

The first category is 'general liability' claims, which usually rely on common law causes of action, including for negligence, or breach of contract. General liability claims can involve injuries arising in public places, sports or recreational injuries and medical negligence. These claims are principally regulated by the *Wrongs Act 1958* (Vic) (**the Wrongs Act**) in particular, Parts VB and VBA.

The second category is claims arising from injuries sustained in the course of employment, which are governed by the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) (**the WIRC Act**).

General Liability Claims

General damages

A prominent part of most personal injury claims is the claim for general damages, also known as 'pain and suffering' damages.

To recover general damages in Victoria under the Wrongs Act, a claimant must usually establish that they have suffered a 'significant injury' caused by the alleged negligence of the respondent. A claimant can establish that they suffer a significant injury by meeting one of the following degree of whole person impairment (**WPI**) thresholds:

- 5% or more for spinal injuries
- more than 5% for physical injuries other than spinal injuries, or
- 10% or more for psychiatric injuries.

A claimant's WPI is assessed by an approved medical practitioner. The medical practitioner must issue a certificate of assessment if they determine that the claimant's injuries satisfy the applicable impairment threshold. The claimant must serve the certificate of assessment and associated documents on each respondent to their claim.

Referrals to a Medical Panel

Once served with a certificate of assessment, a respondent will usually only have 60 days to refer the claimant to a Medical Panel to determine whether the claimant's injuries satisfy the relevant injury thresholds to claim general damages.

If there are multiple respondents to a claim, each respondent is entitled to make its own referral to a Medical Panel, notwithstanding that this might result in different outcomes.

If a respondent misses the time to make a referral to a Medical Panel, it will be deemed to have accepted that the injury is a "significant injury", and is not entitled to rely upon another respondent's referral, even if that referral determined that the claimant's injury did not meet the threshold.

"Unlike some other jurisdictions, Victoria does not have any statutory guidance on how to assess general damages. Courts are, however, entitled (indeed required) to consider previous decisions as a guide when awarding general damages."

Other damages

It is important to note that the WPI threshold requirements only acts as a gateway to claim general damages. Other damages including economic loss, medical expenses and gratuitous/attendant care can be claimed without meeting the threshold.

Statutory caps – general damages and loss of earnings

The damages recoverable for general damages and loss of earnings are 'capped' under the Wrongs Act. The statutory caps are subject to indexation each financial year. The current caps are:

- general damages: \$741,000
- loss of earnings: \$4,392 (per week), being three times average weekly earnings for all Victorians of \$1,464.00.

This demonstrates a 12% increase over two years and 5 % on last year's cap.

A 5% discount rate is also applied to the calculation of future damages, including loss of earnings.

Attendant and gratuitous care damages

Claimants can claim damages for attendant and / or gratuitous care services where they are solely and reasonably required due to the claimed injury. Examples include nursing, domestic care and other assistance to alleviate the consequences of the claimed injury.

The Wrongs Act permits recovery of damages for gratuitous/attendant care services where it is required for more than six hours per week or for more than six months. If the care provided exceeds either threshold, damages can be awarded on the following basis:

- less than 40 hours per week – an hourly rate equivalent to 1/40 of the average weekly total earnings for all employees in Victoria (currently \$36.60 p/h); and
- more than 40 hours per week – the average weekly total earnings for all employees in Victoria (currently \$1,464 p/w or \$36.60 p/h).

A claimant may also be able to recover a sum referable to being unable to provide gratuitous care to another person, for instance, their spouse, child or grandchild. A 5% discount rate applies to any claim for damages for future attendant/gratuitous care.

Proceedings and key dates

Claimants generally have three years from the date of 'discoverability' to commence proceedings. This is when the claimant knows the injury is serious enough to warrant proceedings and is able to identify the party they believe is at fault.

This limitation period is suspended from the date the claimant serves a certificate of assessment to when either the certificate is accepted by the respondent or when the Medical Panel process has concluded.

Claimants in personal injury proceedings are often granted extensions on the limitation period unless the defendant can establish material prejudice.

Most personal injury proceedings are brought in the County Court of Victoria, which has unlimited monetary jurisdiction, although the Supreme Court will hear more complex matters.

In the County Court, standard timetabling orders are set listing a trial either 10 months or 12 months from the date of the first administrative mention.

Both the Supreme and County Courts require parties to attend mediation before proceeding to trial. We recommend allowing reasonable

time between mediation and trial where possible to allow time for negotiations to continue if a resolution is not achieved at mediation.

Workplace injury claims

Overview

The second category is claims arising from injuries sustained in the course of employment. Two classes of claims fit into this category:

- damages actions brought by seriously injured workers under ss 328/335 of the WIRC Act; and
- actions brought by the Victorian WorkCover Authority (**the VWA**) against negligent non-employer third parties to recover the compensation it has paid or may pay to or on behalf of a worker pursuant to s 369 claims under the WIRC Act.

As the VWA has its own entitlement to issue recovery proceedings, there are often two claims arising from the same event/injury being pursued at the same time – the worker's serious injury action and the VWA's recovery action.

Serious injury application process

To issue a damages action, a worker must first apply to their employer and the VWA and establish they have suffered a 'serious injury' in the course of their employment. A worker has a 'serious injury' if they:

- suffers a WPI of more than 30% as assessed by an independent medical examination; or
- satisfies the 'narrative test' of serious injury.

If the VWA determines that the narrative test is satisfied, it will issue a serious injury certificate on application from the worker to issue a damages action.



Most workers who can bring claims fall into the second category. There is a significant body of law around what constitutes a ‘serious injury’ for the purposes of the narrative test. Key indicators are: the impairment must be permanent, cause pain / impairment or loss of significant bodily function.

Workers must serve a copy of their serious injury application on potential respondents. Often, this is the first time a potential third party hears of a proposed action.

The VWA has 120 days to consider the worker’s application for the purposes of issuing a serious injury certificate.

It can award a serious injury certificate for general damages only, or for general damages and loss of earnings. To obtain a certificate for loss of earnings, a seriously injured worker must satisfy a further test of 40% permanent impairment of earning capacity to sue for pecuniary loss damage.

If the VWA refuses to grant a serious injury certificate, a worker can file an originating motion in the County Court seeking a review of the decision.

Statutory conference / offers

If the worker satisfies the serious injury threshold, they must participate in a pre-litigation case conference with the VWA as the employer’s statutory insurer.

After the conference, the VWA must make a settlement offer to the worker (known as a ‘statutory offer’). This offer can be \$nil. The worker then has 21 days to accept the VWA’s offer or make a counter-offer.

The worker’s counter-offer must remain open for 21 days. If it is not accepted, the worker has 30 days to issue proceedings.

A practice has developed where respondents are invited to the conference to explore early settlement and to participate in the statutory offer process.

However, opportunities for early negotiations depend heavily on the attitude of the VWA’s solicitors representing the employer as the only prospective respondent formally involved in the process.

Damages and statutory caps

Subject to receiving a serious injury certificate, the damages entitlement for injured workers is limited to general damages and damages for loss of earnings. The applicable statutory thresholds (indexed annually – and as from 1 July 2024) are:

- general damages: minimum of \$73,000 and maximum of \$741,000, and
- loss of earnings: minimum of \$75,600 and maximum of \$1,702,010.

A 6% discount rate applies to the calculation of future damages, including economic loss.

A worker cannot claim other heads of damage. Usually they receive further no-fault statutory compensation from the VWA – which ultimately forms part of an associated recovery action commenced by the VWA in its own name. The VWA can fund medical and care expenses, rehabilitation/retraining and pay weekly compensation for loss of income (known as ‘weekly benefits’). A lump sum impairment benefit can also be awarded. Any common law damages are reduced by the weekly benefits and impairment benefit paid to avoid double recovery.

Proceedings

Workers generally have six years from the date of their injury to bring common law proceedings against the respondent they believe is at fault. This limitation period is suspended from the day:

- a worker lodges an impairment benefit claim, to either 30 days after the VWA determines the claim or notifies the worker of the Medical Panel's determination; and
- a worker lodges a serious injury application and ending upon common law proceedings being issued.

Respondents are not involved in, or have any control over, these limitation suspensions, which can be very significant and lead to damages actions being brought well after the actual six-year mark. The Courts also tend to be generous in extending limitation periods, save where there is evidence of prejudice to the respondent.

Worker's damages actions and VWA recoveries are usually issued in the County Court of Victoria, although more complex cases can be issued in the Supreme Court of Victoria. The procedural guidance on timetabling orders discussed in the previous proceedings section applies.

VWA recoveries

The VWA is entitled to recover statutory compensation paid and payable to an injured worker from liable third parties. VWA recovery actions are often brought against host employers in labour-hire arrangements and non-employer occupiers.

The VWA's statutory entitlement to indemnity from a negligent third party is the lesser of:

- the amount of compensation paid or payable in respect of the compensable injury; or
- an amount calculated in accordance with the formula in s 369 of the WIRC Act.

In a practical sense, the first limb of the indemnity cannot be assessed with certainty because compensation payments can, conceivably, continue until death. Even claims that are closed can be reopened.

The cap on the VWA's entitlement can therefore be determined under the second limb using the following formula:

$$[A - (B+C)] \times \frac{X}{100}$$

The formula is complicated and extremely unfavourable to third parties: It requires consideration of three things (as Factor B is no longer relevant).

- **Factor A** – This is the worker's hypothetical common law entitlements in respect of the compensable injury. This requires the court to assess what the worker would have received had legislation not limited or restricted his/her common law entitlements. All heads of damage must be included.

- **Factor X** – This is the third party's proportionate liability taking into account the proportionate responsibility of all other parties.
- **Factor C** – This is any amount the third party paid to a worker to settle common law entitlements.

Except in cases where the third party's proportionate liability is small, the formula will usually arrive at a figure that is higher than VWA's payments to the worker.

If there is a judgment in VWA's favour, the court will order an indemnity in its favour assessed using the formula. The VWA is then entitled to recover from a third party the amount of compensation it pays to a worker as and when it is paid, until the amount of the indemnity is exhausted.

In practice, VWA is open, in most cases, to resolving its entitlements on an 'all-in' basis. This generally involves making an educated assessment based on what the worker is likely to be paid by VWA over the life of the claim and, subject to the cap assessed under the formula, paying an amount to VWA to cover these risks. Resolution on these terms means insurers can then close their files.

Damages awards

Unlike some other jurisdictions, Victoria does not have any statutory guidance on how to assess general damages. Courts are, however, entitled (indeed required) to consider previous decisions as a guide when awarding general damages.

Wotton Kearney monitors all reported general damages awards and what we have observed is that they continue to trend upwards. This trend has been particularly pronounced over the last 12 months during which pure psychiatric injury and historical / institutional abuse cases have dominated personal injury litigation.

The statutory maximum for general damages does not generally apply to intentional torts or historical / institutional abuse matters. In December 2024, the Victorian Court of Appeal in *Kneale v Footscray Football Club Pty Ltd*, reduced the jury award of \$3,250,000 to \$850,000 – still which exceeded the statutory maximum of \$713,780. This illustrates the potential of psychiatric injury claims, which may also influence future judgments and increase settlement expectations of claimant lawyers during mediation.



Recent cases at a glance

Case	Category	Injuries	Total general damages awarded
<i>Rourke v Bleakley [2024] VCC 1485</i>	Public liability	Concussion, acquired brain injury, facial and dental fractures and left knee injury – The plaintiff was injured participating in water sports due the negligent driving of a vessel by the defendant.	\$400,000
<i>Patterson (a pseudonym) v Smith (a pseudonym) [2024] VCC 1388</i>	Historical sexual abuse	Psychiatric Injury including post-traumatic stress disorder [PTSD], anxiety, and depression - The plaintiff was sexually abused by her grandfather when she was a child, causing psychiatric injury.	\$420,000
<i>Kneale v Footscray Football Club Ltd [2024] VSCA 314</i>	Historical sexual abuse	Psychiatric injury including post-traumatic stress disorder [PTSD], anxiety, and depression – The plaintiff was sexually abused at the home ground of the Footscray Football Club by a volunteer at the Club while he was a child.	\$850,000 (CoA reduced jury assessment of \$3.25 million)
<i>Bishop of Roman Catholic Diocese of Wagga Wagga, Edwards v TJ (A Pseudonym) [2024] VSCA 262</i>	Historical sexual abuse	Psychiatric injury including psychological trauma and emotional distress – As a child the plaintiff was a member of the Young Christian Students organisation and was sexually abused by a priest associated with the organisation between 1972 and 1976.	\$550,000 (CoA reduced jury assessment of \$1.1 million)
<i>Lapetina v Elgee Park Pty Ltd [2024] VSCA 39</i>	Industrial / Worker injury	Psychiatric injury including adjustment disorder with mixed anxiety and depressed mood – The The plaintiff was working as a housekeeper when she was exposed to the aggressive and erratic behavior of one of her employer's clients – which she alleges caused her to suffer a psychiatric injury.	\$150,000
<i>Hird (a pseudonym) v Demasi [2023] VCC 1228</i>	Historical sexual abuse	Psychiatric injury including post-traumatic stress disorder [PTSD] and psychological trauma/distress – The plaintiff was sexually abused as a child by her neighbour causing psychiatric injuries.	\$67,500
<i>Comensoli v O'Connor [2023] VSCA 131</i>	Historical sexual abuse	Psychiatric injury including post-traumatic stress disorder [PTSD] and chronic Dysthymic Disorder – The plaintiff was sexually abused as a child by a priest involved in his primary school.	\$525,000
<i>Cassidy v Metro Trains Melbourne Pty Ltd [2023] VCC 1866</i>	Public liability	Fracture of the neck, right femur, scarring, injury to right shoulder, traumatic arthritis, infection post-surgery and psychiatric injury – The plaintiff suffered injuries when she was attempting to disembark a train late at night.	\$225,000

Western Australia

Procedural rules and key dates

Personal injury damages in Western Australia are regulated by the *Civil Liability Act 2002* (WA) (CLA) and the *Workers' Compensation and Injury Management Act 2023* (WA) (WCIM).

Limitation periods

The limitation period for personal injury claims is three years under section 14 of the *Limitation Act 2005* (WA). For dust diseases (asbestos-related), s56 provides that the action accrues when the person has knowledge of relevant facts (i.e. The diagnosis of the injury/ the significance of the injury and identity of the respondent).

For historical childhood sexual abuse claims, the time limitation has been removed entirely. Victims who had previously entered into settlement agreements resolving their claims are now able to proceed with a claim for further damages where a court determines it is 'just and reasonable' to do so.

General principles in assessing damages

The fundamental principle of compensation is that damages to be recovered are in monetary terms no more and no less than the claimant's actual loss.

The assessment of damages for personal injuries in an action for negligence is:

- not an exact science
- must be governed by practical common sense in the context of the facts of the particular case
- the District Court of WA has unlimited jurisdiction to hear all personal injury claims

under section 50 of the *District Court of Western Australia Act 1969* (WA)

- there is no trial by jury in WA personal injury litigation.

This favours respondents and insurers as it prevents a situation where a "rogue jury" may award exorbitant damages, and

- section 10A of the CLA allows WA Courts to refer to earlier decisions of that court or other courts for the purpose of establishing the appropriate award (codifying a judge's ability to look to all jurisdictions when assessing awards).

Heads of damages will typically include

General damages / non-pecuniary loss

The claimant is entitled to be compensated for the condition that they have been left in as a result of the accident with a view to giving them fair compensation for the pain, inconvenience and loss of enjoyment which they have sustained.

Section 9 of the CLA imposes restrictions on these damages.

Restrictions and thresholds:

There is no cap on awards of general damages in WA, but there are thresholds that apply which are indexed annually in accordance with the consumer price index calculation.

The threshold amounts are specified in section 9 CLA and are applied as follows:

- Amount A is \$26,500
- Amount C is \$76,000

Section 9 of the CLA provides:

If the amount of non-pecuniary loss is assessed to be more than Amount C but less than the sum of Amount A and Amount C for the year in which the amount is assessed, damages for non-pecuniary loss are not to be awarded in an amount that is more than the excess of the amount assessed over the amount calculated as follows:

Amount A – (Amount assessed – Amount C)

Translation of section 9 of the CLA:

- where general damages are assessed at or below Amount A, no award will be made
- where the assessment falls between Amount A and Amount C, the amount assessed is reduced by Amount A, and
- where the assessment is more than Amount C, but not as much as the sum of Amount A and Amount C, the assessed damages must be reduced by the following amount.

Therefore:

Assessment of damage amount if	Amount awarded under CLA
If less than \$26,500	No award
If between \$26,500 – \$76,000	The plaintiff does not receive the first \$25,500
If between \$76,000 – \$102,500	The threshold applies on a sliding scale
If greater than \$102,500	The plaintiff receives full award

Economic loss

Economic loss is addressed in section 11 of the CLA and is an assessment of the loss of capacity to earn (must be productive of financial loss), rather than a claim for loss of earnings (i.e. as a result of the accident, has the claimant been rendered less capable of earning income? The court looks at the claimant's capacity for work beyond the particular employment in which they were engaged at the time of the accident). It is calculated using figures net of income tax.

Under the CLA, the court is to disregard earnings to the extent that they would have accrued at a rate of more than three times the average weekly earnings at the date of the award. The average total full-time earnings of persons in WA are \$2,193.20 as at November 2025 (26 February 2026, date records published by ABS).

Evidence to gather with respect to loss of earning capacity:

- details of pre-accident employment and education;
- pre-accident and post-accident earnings; and
- post-accident earning capacity, including the kind of work (after the accident), the claimant would be in a position to undertake;
- the likelihood that they would be able to obtain such work; and
- the remuneration which they might expect to derive from it.

A claim for loss of **superannuation** will normally follow a claim for loss of earning capacity. A discount is applied to superannuation calculations to allow for the tax advantages that would be accrued from the employer's contributions, and expenses in the fund – *Jongen v CSR Ltd & Anor* set out an appropriate discount as being 30% but has more recently been applied at 15%.

Past loss of earning capacity (including superannuation and interest)

Past economic loss is evidenced through tax returns, employer's records and workers compensation records.

Future loss of earning capacity (including superannuation loss)

Future economic loss is the income loss the claimant will suffer by not being able to work because of the incident. It is calculated from the date of assessment, until the retirement age of the claimant.

Damages are calculated using multiplier tables.

Past and future gratuitous services

A claimant is entitled to claim an amount equivalent to the commercial cost of domestic and nursing services which had been provided in the past and would also be provided in the future by the family or friends of the injured claimant.

The starting point for the basis of the claim for damages

These damages continue to feature in claims, even where elements seem difficult or unlikely to be made out and as a method by which claimant solicitors seek increased awards.

Section 12 of the CLA provides that a claim for gratuitous care depends on whether:

- the services would have been, or would be, provided even if the person had not suffered the injury – then there is no award;
- the claim is assessed at below Amount B – if so, there is no entitlement to an award. This amount is also indexed annually and is currently \$8,500;



- services are provided for more than 40 hours per week and:
 - the amount of the award is not to exceed the amount calculated on a weekly basis at the rate of the average weekly earnings (AWE) of all employees in WA for the relevant quarter;
- services are provided for less than 40 hours per week:
 - then the amount to be awarded is not to exceed the amount calculated on an hourly rate that is 1/40 of the AWE of all employees for the relevant quarter.

Thresholds and caps:

- damages may be awarded for services provided by a member of the same household/ family.
- no damages awarded if the court assesses the damages (past and future) at \$8,500 or less.
- the value is assessed with regard to the average weekly total earnings of all employees in WA for the relevant quarter and the rate per hour is 1/40 of the average weekly earnings, and
- a claim per week cannot exceed 40 hours.

Special damages

Special damages are used to refer to past Medicare benefits, past private healthcare benefits and associated costs incurred by a claimant in relation to their past care.

This can include private expenses for painkillers, medical aids (such as crutches), and the costs of attending appointments (such as travel).

Other considerations

Fox v Wood damages

Where a plaintiff has received workers compensation benefits upon which tax was paid and is required to repay the gross benefits from damages, the damages must be increased to allow for the tax paid.

The claimant's loss, being the tax paid on the benefits received, is a natural and foreseeable consequence of the injuries: *Fox v Wood* (1981).

When making such claims, it is normally necessary to prove that the insurer does require repayment of the gross sum.

Vicissitudes of life

A damages award for future losses has a 6% discount factor applied to it in line with Section 5 of the *Law Reform (Miscellaneous Provisions) Act 1941* (WA) which reflects the vicissitudes of life (i.e. normal sickness, absences from employment) which would reduce the claimant's position or income.

Injured workers

The rights of a worker injured in the course of employment are governed by the WCIM and WorkCover WA.

The WCIM (and its application) has become increasingly relevant with the rise in injured worker claims and contractual relationships between employers and other entities on the same sites. It provides for no-fault compensation entitlements to an injured worker, but, relevantly to insurers, limits the common law rights of injured workers, employers and third parties.

The standard limitation period for a worker's injury claim is three years.

When a worker is injured during their employment, they are generally entitled to no-fault compensation benefits under their employer's mandatory WorkCover insurance. These insurances are statutorily required and must comply with Schedule 1 of the WCIM.

A worker's entitlements under workers compensation typically includes weekly payments. A worker may also claim (a) 'no-fault' lump sum payments for their respective injuries (including where the injury is both serious and permanent), and (b) all reasonable medical and the like expenses.

A worker may bring a claim for common law damages against their employer by satisfying the requirements under s 421(1) of the WCIM as follows:

- if the worker elects to retain the right to seek the damages,
- the Director of WorkCover WA registers the election, court proceedings seeking damages are commenced after the Director provides written notice to the worker that the election is registered, and

- the Court is satisfied that the worker has established a whole person impairment (WPI) of greater than 15%.

Assessment of WPI of Worker

A worker has their injury assessed by an approved medical specialist (AMS) approved by WorkCover WA, who evaluates the injury using the *WorkCover WA Guides for the Evaluation of Permanent Impairment* and the American Medical Association's *Guides to the Evaluation of Permanent Impairment*.

If the worker's injuries are assessed at 15% WPI or more, the worker has eligibility to pursue common law damages. However, being assessed over 15% WPI does not make pursuing common law damages against the employer mandatory, and all the requirements under s 421(1) must be met.

Election by the Worker

Critically, the injured worker must elect to pursue their employer under s 421(1). Previously, workers were required to elect to pursue common law damages by the "termination date" (being 12 months from the date in which the worker made their workers' compensation claim). However, under the new WCIM the "termination date" has been abolished, but workers are still required to register an election with WorkCover WA to pursue their employer at common law.

Workers' Rights Against a Third Party

The provisions of the WCIM do not apply to, or affect, the injured worker's rights to pursue a third party for damages. An injured worker is able to pursue any third party for any alleged liability for their workplace injury. Accordingly, where the injured worker has not satisfied s 421(1) (such as the minimum 15% WPI threshold) an injured

worker will often look to obtain damages from a negligent third party who may only have a limited responsibility (e.g. an occupier).

We have seen an increasing number of claims where, despite the injured worker satisfying the 15% WPI threshold, the worker does not elect to pursue their employer. This results in the worker's common law rights against the employer being waived and subsequently, the rights of a negligent third party to pursue the employer for contribution under the WCIM.

Section 427(1) – an important consideration in all injured worker claims

As outlined above, section 421(1) of the WCIM regulates the injured worker's ability to pursue their employer. Where s 421(1) is satisfied, there is still a limit placed on the employers' liability to the claim under s 424(2)(a), where an employer's liability is capped if the injured worker's WPI is above 15% but less than 25% (known as a 'capped-claim').

The capped amount is indexed every financial year by WorkCover WA and is currently valued at \$573,766. Critically, s 427(1) provides that the employer cannot be joined to a proceeding or be joined to contribute to the claim under the Law Reform (*Contributory Negligence and Tortfeasors' Contribution*) Act 1947 (WA) if:

- s 421(1) has not been satisfied – that is the injured worker has not met the threshold 15% WPI and elected to pursue his employer, or
- s 424(2)(a) has been satisfied – that is that the employer has already paid the injured worker the statutory limit (including weekly compensation payments).

The practical effect of s 427(1) is that an employer often cannot be joined to proceedings by a third party, where an injured worker has not elected to pursue their employer or satisfied the minimum WPI.

This can result in unjust outcomes where a third party (who may have limited responsibility for a claim) cannot join or pursue the employer (who has the lion's share of liability) due to the injured worker's decision to not elect to pursue their employer. Similarly, even where the employer is a party to the proceedings, in the case of a capped claim the third party could be responsible for bearing a disproportionately high share of the damages if the capped amount has been exhausted.

This means that a third party who has limited responsibility for a claim may end up paying 100% of the claim. This nuance is also as a result of Part 1F of the CLA not applying to personal injury claims – i.e. the proportionate liability regime cannot be used to limit the third party's liability exposure to a 'proportion' of their liability only.

The application of s 427(1) by the WA Courts is largely untested. Cases typically relate to the procedural requirements to satisfy its operation, such as attaining the correct WPI to sue an employer (e.g. *Gable v Steel Cap Recruitment Pty Ltd* (No 2) [2017] WADC 10) or an employee's election process, such as filing the correct forms (e.g. *Mogensen v Premium Grain Handlers Pty Ltd* [2008] WASC 145).

Section 435(1) – Recovery actions by workers' compensation insurers

The increase in injured worker claims in WA has led to an increase in recovery actions by workers compensation insurers. Under the WCIM, the employer of an injured worker has a statutory right to be indemnified by a negligent third party for any compensation that has been paid, or may be paid, to an injured worker – this takes the form of a subrogated recovery claim controlled by the employer's workers' compensation insurer.

The relevant workers' compensation insurer pursues its statutory rights of recovery from third parties (i.e. nonemployer defendants) by way of a recovery action for indemnity under section 435(1) of the WCIM. This is often called a workers' compensation recovery.

Section 93(1) covers compensable injuries that were caused in circumstances that create a legal liability in some person other than the employer and where neither the employer nor any person for whose negligence the employer is legally responsible is negligent. In that case, the employer is entitled to be indemnified by the person whose negligence caused the injury to the worker to the full extent of the employer's liability to pay compensation under this Act, whether or not the defendant has discharged his liability to pay damages to the worker by judgment or by settlement or otherwise.

An allowance is made for a reduction in the amount owing by a negligent third party to the extent of the worker or employer's own negligence under s 435. Recovery claims are often made against occupiers of the premises where the workplace injury occurred (such as the mine operator or site owner); host employers due to the increased use of labour-hire services in the mining and construction industry; manufacturers and suppliers of relevant equipment which may have

caused or contributed to a workplace injury; and other contractors/sub-contractors at the site who have some involvement in the workplace injury (such as spotters or site supervisors).

Section 435(1) provides a statutorily protected cause of action for an employer/workers' compensation insurer to recover sums it has paid to an injured employee from any negligent third party. WA Court decisions have protected this right and ruled against parties trying to circumvent this provision.

Some workers compensation insurers are prepared to accept reduced sums to satisfy a recovery, particularly where there is limited liability on behalf of the negligent third party.

Limitation Period for recovery actions

The limitation period for a workers' compensation recovery action is six years from the date each payment of compensation is made, which means the workers' compensation insurer may be able to bring proceedings against a third party many years after the worker's injury has happened or resolved.

To circumvent this issue, an injured worker's lawyer typically notifies or "invites" the workers' compensation insurer to attend the settlement conference in the common law proceeding so that both claims can be resolved at the same time.

Principal's Indemnity Extension

A nuance of the WA jurisdiction is the increasing prevalence of a 'principal's indemnity extension' within a workers compensation policy, particularly in the mining, oil & gas and construction industries.

A principal's indemnity extension is usually an endorsement or extension on the employers' workers compensation policy that extends insurance cover to the named principal (usually the operator or head contractor) for any claim made against the principal arising out of an injury to an employee of the subject employer (usually a sub-contractor/contractor).

In practice, what a principal's indemnity extension in a worker's compensation policy effectively does is:

- provide a form of public liability cover for the named principal, in that the workers compensation policy extension will respond to the common law claim from the injured employee (as opposed to the principal's public liability policy); and
- prevent the employer or the workers compensation insurer from bringing a WorkCover recovery as the principal is insured for such a claim under the same workers compensation policy. This results in a circuitous action (where the insurer would be recovering from themselves).

It is therefore important to review the relevant contractual materials between the principal and contractor/employer of the injured worker in order to determine whether a principal's indemnity extension is available.

Recent cases at a glance

Case	Plaintiff details	Cause of action	Injuries	NEL Award	Total damages awarded
<i>Balharrie v Joevin Johan Jean-Claude Blouet t/as Perth Quad</i> [2025] WADC 90	Female, 24	Negligence	Rib and hip injury – Plaintiff sustained several rib fractures, a punctured lung and hip injuries when she was thrown off a quad bike as part of a group tour activity	\$100,000	\$645,098.24
<i>Pringle v Tabloid Pty Ltd</i> [2024] WASCA 152	Female, 26	Negligence	Caustic burns to gastrointestinal tract – Plaintiff sustained injuries after consuming chips from Chicken Treat mistakenly seasoned with caustic soda.	\$100,000	\$516,683.79
<i>Carusi v St Mary's Anglican Girls School Inc</i> [2024] WASCA 137	Female, 44	Occupiers' liability	Ankle injury – Plaintiff sustained injuries after falling in an aisle at a performing arts centre while she was a volunteer for a dance competition.	\$110,000	\$1,191,278.34 (provisional assessment only as plaintiff unsuccessful, WK acted on behalf of Defendant)
<i>Allen v Merym Pty Ltd t/as EMCO Building</i> [No 3] [2023] WADC 55	Male, 44	Occupiers' liability & workplace injury	Elbow injury – Plaintiff sustained injuries to his right elbow after walking into a protruding scaffold tube at a construction site he was working at.	\$40,000	\$554,115
<i>Fabri v Masters Home Improvement Australia Pty Ltd</i> [2023] WADC 97	Male, 56	Occupiers' liability	Back injury – Plaintiff sustained injuries after slipping on liquid on the floor of a store.	\$500	\$120,744.20
<i>Tristam-Howard v Morris Corporation (Aust) Pty Ltd</i> [2023] WADC 60	Female, 21	Workplace injury	Back injury – Plaintiff sustained injuries while sweeping / cleaning a runway during the course of his work pursuant to a labour hire agreement.	\$110,000	\$1,337,537.76
<i>Murrell v Brosna Constructions Pty Ltd</i> [2022] WADC 68	Male, 31	Workplace injury	Foot injury – Plaintiff sustained injury when formwork he was working on collapsed and caused him to fall 3.6 metres.	\$60,500	\$540,963.25
<i>Ciesla v Mosman Bay Construction Pty Ltd (in liq)</i> [2022] WADC 3	Male, 25	Workplace injury	Wrist, elbow and forearm injury – Plaintiff sustained injury when he fell off a ladder while working on a construction site.	\$150,000	\$696,590.73
<i>Essaiyd v Saint</i> [2021] WADC 61	Male, 43	Occupiers' liability	Hand injury – Plaintiff's hand injured while working on a shipping vessel as a share fisherman	\$20,000 (but not awarded as below threshold under s9 of the CLA)	\$23,595

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% of MEC	% of Max Amount	Award (Rounded)
100%	100%	804000
99%	99%	796000
98%	98%	788000
97%	97%	780000
96%	96%	772000
95%	95%	764000
94%	94%	756000
93%	93%	747500
92%	92%	739500
91%	91%	731500
90%	90%	723500
89%	89%	715500
88%	88%	707500
87%	87%	699500
86%	86%	691500
85%	85%	683500
84%	84%	675500
83%	83%	667500
82%	82%	659500
81%	81%	651000
80%	80%	643000
79%	79%	635000
78%	78%	627000
77%	77%	619000
76%	76%	611000
75%	75%	603000
74%	74%	595000
73%	73%	587000
72%	72%	579000
71%	71%	571000
70%	70%	563000
69%	69%	555000
68%	68%	546500
67%	67%	538500
66%	66%	530500
65%	65%	522500
64%	64%	514500
63%	63%	506500
62%	62%	498500
61%	61%	490500
60%	60%	482500
59%	59%	474500
58%	58%	466500
57%	57%	458500
56%	56%	450000
55%	55%	442000
54%	54%	434000
53%	53%	426000
52%	52%	418000

% of MEC	% of Max Amount	Award (Rounded)
51%	51%	410000
50%	50%	402000
49%	49%	394000
48%	48%	386000
47%	47%	378000
46%	46%	370000
45%	45%	362000
44%	44%	354000
43%	43%	345500
42%	42%	337500
41%	41%	329500
40%	40%	321500
39%	39%	313500
38%	38%	305500
37%	37%	297500
36%	36%	289500
35%	35%	281500
34%	34%	273500
33%	33%	265500
32%	30.0%	241000
31%	26.0%	209000
30%	23.0%	185000
29%	18.0%	144500
28%	14.0%	112500
27%	10.0%	80500
26%	8.0%	64500
25%	6.5%	52500
24%	5.5%	44000
23%	5.0%	40000
22%	4.5%	36000
21%	4.0%	32000
20%	3.5%	28000
19%	3.0%	24000
18%	2.5%	20000
17%	2.0%	16000
16%	1.5%	12000
15%	1.0%	8000

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ISV	Injury between 1 Jul 19 – 30 Jun 20	Injury between 1 Jul 20 – 30 Jun 21	Injury between 1 Jul 21 – 30 Jun 22	Injury between 1 Jul 22 – 30 Jun 23	Injury between 1 Jul 23 – 30 Jun 24	Injury after 1 Jul 25	Injury after 1 Jul 25
1	1580	1620	1630	1690	1780	1860	1970
2	3160	3240	3260	3380	3560	3720	3940
3	4740	4860	4890	5070	5340	5580	5910
4	6320	6480	6520	6760	7120	7440	7880
5	7900	8100	8150	8450	8900	9300	9850
6	9750	9990	10050	10420	10980	11480	12160
7	11600	11880	11950	12390	13060	13660	14470
8	13450	13770	13850	14360	15140	15840	16780
9	15300	15660	15750	16330	17220	18020	19090
10	17150	17580	17650	18300	19300	20200	21400
11	19330	19780	19890	20620	21740	22760	24110
12	21510	22010	22130	22940	24180	25320	26820
13	23690	24240	24370	25260	26620	27880	29530
14	25870	26470	26610	27580	29060	30440	32240
15	28050	28700	28850	29900	31500	33000	34950
16	30540	31250	31410	32550	34290	35920	38040
17	33030	33800	33970	35200	37080	38840	41130
18	35520	36350	36530	37850	39870	41760	44220
19	38010	38900	39090	40500	42660	44680	47310
20	40500	41450	41650	43150	45450	47600	50440
21	43290	44300	44510	46110	48570	50870	53860
22	46080	47150	47370	49070	51690	54140	57320
23	48870	50000	50230	52030	54810	57410	60780
24	51660	52850	53090	54990	57930	60680	64240
25	54450	55700	55950	57950	61050	63950	67700
26	57570	58890	59150	61260	64540	67610	71580
27	60690	62080	62350	64570	68030	71270	78460
28	63810	65270	65550	67880	71520	74830	79340
29	66930	68460	68750	71190	75010	78590	83220
30	70050	71650	71960	74500	78500	82250	87100
31	73490	75170	75480	78150	82340	86270	91360
32	76330	78690	79010	81800	86180	90290	95620
33	80370	82210	82540	85450	90020	94310	99880
34	83810	85730	86070	89100	93860	98330	104140
35	87250	89250	89600	92750	97700	102350	108400
36	91000	93080	93440	96720	101880	106730	113040
37	94750	96910	97280	100690	106060	111110	117680
38	98500	100740	101120	104660	110240	115490	122320
39	102250	104570	104960	108630	114420	119870	126960
40	106000	108400	108800	112600	118600	124250	131600
41	110030	112520	112940	116880	123110	128980	136610
42	114060	116640	117080	121160	127620	133710	141620
43	118090	120760	121220	125440	132130	138440	146630
44	122120	124880	125360	129720	136640	143170	151640
45	126150	129000	129500	134000	141150	147900	156650
46	130180	133120	133640	138280	145660	152630	161650
47	134210	137240	137780	142560	150170	157360	166670
48	138240	141360	141920	146840	154680	162090	171680
49	142270	145480	146060	151120	158190	166820	176690
50	146300	149600	150200	155400	163700	171550	181700

ISV	Injury between 1 Jul 19 – 30 Jun 20	Injury between 1 Jul 20 – 30 Jun 21	Injury between 1 Jul 21 – 30 Jun 22	Injury between 1 Jul 22 – 30 Jun 23	Injury between 1 Jul 23 – 30 Jun 24	Injury after 1 Jul 25	Injury after 1 Jul 25
51	150600	154000	154620	159970	168510	176590	187040
52	154900	158400	159040	164540	173320	181630	192380
53	159200	162800	163460	169110	178130	186670	197720
54	163500	167200	167880	173680	182940	191710	203060
55	167800	171600	172300	178250	187750	196750	208400
56	172100	176000	176720	182820	192560	201790	213740
57	176400	180400	181140	187390	197370	206830	219080
58	180700	184800	185560	191960	202180	211870	224420
59	185000	189200	189980	196530	206990	216910	229760
60	189300	193600	194400	201100	211800	221950	235100
61	193870	198270	199090	205950	216910	227300	240770
62	198440	202940	203780	210800	222020	232650	246440
63	203010	207610	208470	215650	227130	238000	252110
64	207580	212280	213160	220500	232240	243350	257780
65	212150	216950	217850	225350	237350	248700	263450
66	216720	221620	222540	230200	242460	254050	269120
67	221290	226290	227230	235050	247570	259400	274790
68	225860	230960	231920	239900	252680	264750	280460
69	230430	235630	236610	244750	257790	270100	286130
70	235000	240300	241300	249600	262900	275450	291800
71	239880	245290	246310	254780	268360	281170	297860
72	244760	250280	251320	259960	273820	286890	303920
73	249640	255270	256330	265140	279280	292610	309980
74	254520	260260	261340	270320	284740	298330	316040
75	259400	265250	266350	275500	290200	304050	322100
76	264280	270240	271360	280680	295660	309770	328160
77	269160	275230	276370	285860	301120	315490	334220
78	274040	280220	281380	291040	306580	321210	340280
79	278920	285210	286390	296220	312040	326930	346340
80	283800	290200	291400	301400	317500	332650	352400
81	288960	295480	296700	306880	323270	338700	358810
82	294120	300760	302000	312360	329040	344750	365220
83	299280	306040	307300	317840	334810	350800	371630
84	304440	311320	312600	323320	340580	356850	378040
85	309600	316600	317900	328800	346350	362900	384450
86	314760	321880	323200	334280	352120	368950	390860
87	319920	327160	328500	339760	357890	375000	397270
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89	330240	337720	339100	350720	369430	387100	410090
90	335400	343000	344400	356200	375200	393150	416500
91	340850	348570	349990	361980	381290	399530	423260
92	346300	354140	355580	367760	387380	405910	430020
93	351750	359710	361170	373540	393470	412290	436780
94	357200	365280	366760	379320	399560	418670	443540
95	362650	370850	372350	385100	405650	425050	450300
96	368100	376420	377940	390880	411740	431430	457060
97	373550	381990	383530	396660	417830	437810	463820
98	379000	387560	389120	402440	423920	444190	470580
99	384450	393130	394710	408220	430010	450570	477340
100	389900	398700	400300	414000	436100	456950	484100

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