

Episode 120: Summary

Episode name: Navigating Road Accident Claims: Comparing NSW and Queensland Procedures

Guest(s): Henry Garrett

What area(s) of law does this episode consider?

Personal injury; motor vehicle accident claims.

Why is this topic relevant?

Personal injury is a massive part of many Australian lawyers' practices, and a significant portion of personal injury claims are made up of motor vehicle accidents. Accidents out on the road are distressingly common, impacting countless lives every year. Whether it's a minor collision or a catastrophic event, the aftermath can be overwhelming for anyone involved.

What legislation is considered in this episode?

Civil Liability Act 2002 (NSW)

Legal Profession Act 2007 (Qld)

Motor Accidents Compensation Act 1999 (NSW) (Repealed)

Motor Accident Injuries Act 2017 (NSW)

Personal Injuries Proceedings Act 2002 (Qld)

What are the main points?

- Accidents are often caused by factors such as speed, drugs, alcohol, and mobile phone use. The combination of these can lead to disasters, impacting collision severity and fatality rates. Advancements in technology, like police scanning for substances, have improved over the years. Fatal accidents, while rare, can result in multiple claims for things like nervous shock, dependency, and loss of income.
- Only a small percentage of clients seek legal assistance immediately after an accident due to the seriousness of their injuries, but there are often only short windows of time as a lawyer to obtain evidence. The example provided by Henry is that the Gold Coast City Council will only hold CCTV footage for 28 days. Obtaining accident details and witness information promptly is crucial, as memories can fade, leading to difficulties in identifying crucial details such as the car's color or make.
- The Nominal Defendant, a government-owned insurance company, provides coverage for such cases where the responsible party is unknown or the vehicle is not registered. However, the proper search and enquiry requirement for these claims can place significant onus on the injured person to identify the vehicle they were injured by.
- In New South Wales, there is a trend in personal injury cases, particularly in motor vehicle claims toward settlement before the Personal Injury Commission determines the level of impairment, likely due to delays in the assessment process. This trend may benefit claimants who can negotiate settlements earlier, although it may result in lower compensation amounts.
- In Queensland, the process of obtaining compensation and having injuries accepted by WorkCover has become increasingly difficult, requiring costly

efforts to overcome obstacles like rejections by independent WorkCover doctors.

What are the practical takeaways?

- In Queensland, the 50/50 rule protects injured individuals by requiring law practices to reduce their legal fees if they equal or exceed the compensation received by the claimant. This rule ensures that the claimant receives a fair amount of compensation. Cost regulations are heavily monitored during claim settlements to prevent overcharging clients. In New South Wales, the State Insurance Regulatory Authority (SIRA) tracks legal costs to ensure clients receive their fair share of compensation.
- The introduction of the *Motor Accident Injuries Act 2017 (NSW)*, which replaced the *Motor Accidents Compensation Act 1999 (NSW)* for all accidents after 1 December 2017, has significantly impacted the process of making claims for injuries from accidents, particularly in motor vehicle cases. Instead of receiving a lump sum from insurers, claimants now receive weekly benefits for six months. However, those with severe injuries exceeding a 10% threshold may still pursue larger damages. Different procedures apply in Queensland under PIPA and in New South Wales under the *Civil Liability Act 2002 (NSW)* for public liability claims, with the latter involving court proceedings for compensation access.
- Regardless of the claim amount, it's important to show that you take every client seriously. Whether it's a smaller or larger claim, it will still likely be the biggest legal issue the client has ever faced, and treating it with importance will make a difference to the client.
- For aspiring personal injury lawyers, Henry emphasised the importance of implementing your own personal identity and style into your practice of the law, to ensure you enjoy your work, and are genuine and authentic with clients.