



LawTalk Blog

How is compensation calculated for motor vehicle accidents?

Author: [Dion McCaffrie](#)

Email: enquiry@andersons.com.au

Phone: 08 8238 6680

Date: Monday May 26, 2014

From July 1 2013, significant legislative changes have greatly affected the assessment of compensation available for people injured in motor vehicle accidents in South Australia.

Under the [new system](#) injuries are measured against an Injury Scale Value ("ISV Scale") and assigned a numerical value. The ISV Scale contains a list of all recognised injuries and the range in value which can be assigned. A person's injury must exceed prescribed thresholds in order for that person to be eligible for compensation. For example, a minor ankle injury can be awarded a value of between 0-5, which would not meet the threshold for compensation.

The value assigned to an injury is linked to a prescribed amount of compensation. For example, an injury with an ISV Scale value of 11 is prescribed \$3,000.

In circumstances where a person has sustained multiple injuries the dominant injury (the injury with the highest value on the ISV Scale) must exceed the threshold in order to receive compensation.

With multiple injuries, it is not automatic that the value of each separate injury is added together to achieve the total value.

The system implemented by this government results in South Australian road accident injury victims being the least compensated in Australia.

What compensation is payable for non-economic loss?

Compensation for non-economic loss (pain & suffering) will not be awarded unless the injuries amount to more than 10 points (11 or higher) on the ISV Scale. This is a high threshold to meet and many people with injuries which were previously compensable (before the new laws came in) are likely to be unable to access compensation under the new system.

The legislation anticipates that there may be exceptional circumstances where a person's injuries, despite being below 11 on the ISV Scale, are compensable. It is currently unclear how the Courts will interpret this exception.

Where a person has a pre-existing condition at the time of the road accident, which has been aggravated by the accident, the Court may only consider the degree to which this condition was exacerbated by the accident.

What compensation is payable for future economic loss?

A person is not entitled to any compensation for future economic loss or impairment of earning capacity unless their injuries exceed 7 points (8 points or more) on the ISV Scale.

Any compensation a person receives for future economic loss is automatically reduced by 20%. Likewise, if it is found that the injured person contributed to the severity of their injuries (called contributory negligence), for example by not wearing a seatbelt, a further reduction (after the automatic 20% for future economic loss), may also be applied. There are very limited circumstances where a person may be awarded compensation for future economic loss where their injuries are less than 7 points on the scale.

What compensation is payable for gratuitous services?

Compensation for gratuitous services, such as personal care and home help, are only awarded where a person can satisfy two criteria.

1. A person's injury exceeds 10 points (11 or higher) on the ISV Scale; and
2. The services must be provided for at least 6 hours a week for at least 6 consecutive months.

Compensation in this category is only applicable where a person is engaged on a voluntary basis to assist the injured person. Whether a person would be compensated if they paid for care is not clear.

Payments are still available for medical and like expenses while a claim is being determined.

Are there time limits to claiming motor accident compensation?

The time limit for a person to bring a motor vehicle injury claim remains at 3 years from the date of accident or in the case of a minor (a person under the age of 18 at the time of the accident), 3 years from the date of their 18th birthday.

Finally, the amendments referred to in this article only apply to injuries that have occurred since the commencement of the new provisions (1 July 2013) and any claims arising out of injuries in a motor vehicle accident occurring before that date are subject to the [previous scheme](#).

The new scheme is harsh, unreasonable and complex. Your local politician needs to be made aware of that.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to South Australian legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.