



Claims following Death of or Serious Injury to a Person: New South Wales

Although claims for compensation can still be made when a person has died, the law takes a different approach to calculation of the compensation amounts. There is no compensation available for the death of a person as such, but only for the consequences for others such as a spouse / de facto, a child and sometimes other family members.

Mental harm consequences may also be claimed if another person is seriously injured. The injured person may have their own compensation entitlements as well.

Mental Harm Claims

Sometimes called 'nervous shock claims', claims for compensation for mental harm are made by a person for the mental harm they suffer, as a result of the injury to or death of another person (the victim). There are however some constraints, in practice:

- The mental harm must be serious in nature, consisting of a recognised psychiatric illness. It is sometimes said that a 'mere grief reaction' is not enough. A supportive report from a psychiatrist is necessary.
- A person of normal fortitude would foreseeably have suffered the mental harm. While usually not a difficult hurdle, problems may arise if the person wishing to make the claim has had a severe reaction flowing from a relatively minor injury to another.
 - The person wishing to make the claim must either:
 - Have witnessed, at the scene, the victim being killed, injured or put in peril; or
 - Be in a close relationship with the victim. Examples may include a parent of the victim, the spouse or partner of the victim, or a child of the victim.

Calculating the compensation amount for mental harm is done in a similar way to claims for physical injury. The compensation may include non-economic loss, wage loss and medical treatment expenses.

Dependency Claims

Dependency claims may be made where the deceased person was providing financial support and or domestic assistance to others, such as a spouse and children. A claim is usually made by the executor of the estate of the victim who makes a single claim for all of those who may be entitled. A claim will usually cover:

- Funeral and related costs;
- Loss of financial support, such as where a parent financially supported a dependent child; and
- Loss of services, for example where the victim previously provided unpaid services to a spouse or child such as cooking, cleaning, gardening and similar services. However, the law in relation to loss of services claims remains unclear.

Dependency claims can be complex and may be influenced by other entitlements, such as the inheritance of property providing an accelerated benefit.



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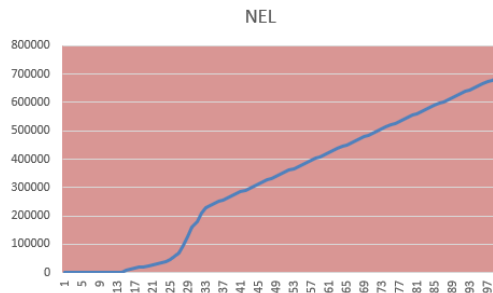


Calculating Financial Compensation for Mental Harm

The pie chart below illustrates how a claim may be constructed, with amounts for items such as medical expenses, loss of income, nursing / care costs (including care provided without payment by a family member or friend) and so on. The compensation sum will usually include an amount for pain, suffering and loss of enjoyment of life (sometimes called general damages or non-economic loss). In addition, the compensation sum will usually include an amount for the majority of the legal costs incurred by the person making the claim.



Some compensation components have thresholds or caps. For example, non-economic loss awards are subject to thresholds and caps. The graph below provides an indication. Claims for less than 15% of a most extreme case do not permit recovery for non-economic loss. Claims between 15% and 32% allow for recovery but at a reduced rate. Claims of 33% and above allow for a pro rata award, by reference to the maximum which is presently about \$760,000.



A cap exists for loss of income compensation, by reference to three times average weekly earnings. Compensation payments are usually made direct to a claimant. However if the claimant is under the age of 18 years or does not have the capacity to manage the compensation proceeds, investment with a trustee will usually be necessary.

Carroll & O'Dea Lawyers has prepared this information sheet to provide general information, however legal advice directed to the specific circumstances of a proposed claim should be obtained.