

## Claim Assessment Terminology

In the area of claims assessment, there is an array of terminology which derives from legislation, common law principles and commonly used guides such as the American Medical Association Guides to the Evaluation of Permanent Impairment 5th Edition or “AMA 5” for short. The language used may depend upon which stage of the claim the matter is at. The following table sets out some of the commonly used terminology you might come across when handling a claim or reading an advice from your legal provider or counsel. The simple explanations should assist in making sense of the jargon, particularly for those new to the claims arena.

Pre Court Procedure Legislation	
Word	Explanation
<p><i>Personal Injuries Proceedings Act 2002</i> (QLD) (“PIPA”)</p> <p><i>Civil Law (Wrongs) Act 2002</i> (ACT) Chapter 5</p> <p><i>Personal Injuries (Civil Claims) Act 2003</i> (NT) (not yet commenced)</p> <p>Supreme Court Civil Rules 2006 (SA) Chapter 3</p>	<p>The Acts listed apply to personal injury claims in certain circumstances and require pre-court procedures to be followed before instituting a litigated claim. Queensland, Australian Capital Territory, Northern Territory (not yet commenced) and South Australia are the only States and Territories which provide for a pre-court procedure. Workers compensation claims and Compulsory Third Party claims may be subject to different legislation.</p>
Claimant	The pre-litigation description of a party making the claim; injured party.
Compulsory Conference	Before starting, a court proceeding a conference must be convened between the parties. Legislative provisions may affect the timing, attendance, manner and procedure to be followed both prior to and following the compulsory conference.
Contribution Notice	A notice issued by the respondent to add another party to the claim against whom contribution or indemnity is sought.
Contributor	The pre-litigation description of a party joined to the claim by the respondent pursuant to a contribution notice.

<b>Pre Court Procedure Legislation</b>	
<b>Word</b>	<b>Explanation</b>
Mandatory Final Offer (“MFO”)	If the claim is not settled at the compulsory conference, the claimant and respondents must, unless the Court has dispensed with this obligation, exchange written final offers at the conference or within 14 days after the date of the agreement or order dispensing with the conference.
Notice of Claim	Initiating document served by the injured party to commence the claim pursuant to the pre-Court legislation.
Respondent	The pre-litigation description of a party who defends the claim.

<b>Court Proceedings</b>	
<b>Word</b>	<b>Explanation</b>
Court Rules	Statutory rules which regulate procedures and practice in the High Court, Supreme, District and Magistrates Courts.
Claim/Statement of Claim	A Claim is a form of originating process in which pleadings are necessary. The pleading which first outlines the basis of the claim is the Statement of Claim.
Conduct Money	A monetary amount prescribed by the Court Rules that must be tendered with a subpoena for the subpoena to be binding; it is intended to provide reimbursement for reasonable expenses such as travel, meals, lodging and loss of time incurred as a result of the witness having to attend and provide evidence at trial.
Consent Order	A Court order that all parties in the litigation agree to.
Contempt of Court	Disobedience to a court judgment, order or direction. If a person is found in contempt of court, that person will be issued a fine or may face an order for imprisonment.
Costs Follow the Event	Where an unsuccessful party is ordered to pay the successful party’s costs.
Default Judgment	Judgment due to failure to comply with mandatory rules of procedure to file a defence.

Court Proceedings	
Word	Explanation
Defendant or Respondent	A person/party against whom Court proceedings are brought. In Queensland, a person responding to a claim is a Defendant. A person responding to an Application is a Respondent.
Formal Offer	An offer made pursuant to the Court Rules.
Notice Claiming Contribution	Notice that one party is claiming contribution from another party. A simple pleading that may be used if the only claim is for contribution because of the negligence of a Third Party. It cannot be used if there is any other basis to claim against the Third Party.
Notice of Intention to Defend/Defence	A Defendant must file a notice with the relevant Court to confirm its intention to defend the allegations made against it. The Defendant's first pleading (in response to any Statement of Claim) is the Defence. The Defence may include a claim against the Plaintiff. In that case it is called a "Defence and Counterclaim".
Originating Application/Originating Process	A document issued by a Court to require the attendance of the parties or the performance of some initial step in the proceedings by a party.
Party/Party Costs	A particular basis on which costs are calculated to be paid by the unsuccessful party to the successful party for legal fees. There are other bases upon which costs can be calculated, including an indemnity basis.

Court Proceedings	
Word	Explanation
Plaintiff or Applicant	A person/party applying for relief against another person in a Court proceeding. In Queensland, if the person files a claim, they are a Plaintiff and if they file an Originating Application, they are an Applicant.
Reply	The Plaintiff's response to the Defence. If the Defendant issues a counterclaim, the response must answer the counterclaim as well. In that instance, it will be titled a "Reply and Answer"
Statement of Loss and Damage	A statement used only in personal injury proceedings of all loss particularising a party's claim; a list itemising all loss sustained by a party.
Subpoena for Production	A Court order to a person to produce particular documents that are required as evidence. The party calling for the production of the documents must pay the reasonable expenses of the person to whom the subpoena is addressed.
Subpoena to Attend	A Court order to a person to appear in Court on a certain day to give evidence. The party calling the witness/party must pay his/her reasonable expenses.
Summary Judgment	A judgment granted on a claim or defence about which there is no genuine issue of material fact and upon which the applicant is entitled to prevail as a matter of law.
Summons	A Court order to an individual to appear in Court at a specified place and time. The term is used both in criminal and civil cases.
Third Party	A further person/party joined to the proceedings by a Defendant.
Third Party Proceedings	Proceedings brought by a Defendant to a civil action against a person other than a Plaintiff. The most common claim brought in third party proceedings is one for contribution or indemnity under a contract.

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Common Law	
Word	Explanation
Contributory Negligence	The role that someone's own negligence played in causing that person's injury or loss.
Duty to Mitigate	Duty to reduce an existing harm so that further damage might be halted, slowed, or diminished.
Negligence	The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.
Personal Injuries	Any harm caused to a person, such as a broken bone, a cut or a bruise; bodily injury.
Professional Negligence	Failure to do something that an average member of that profession would do or doing something that an average member of that profession would not do.
Tortfeasor	One who commits a tort; a wrongdoer.
Torts	A common law wrong for which a remedy may be obtained, usually in the form of damages; a breach of a duty that the law imposes on persons who stand in a particular relationship to one another.

General Legal Terms in Claims	
Word	Explanation
Indemnity	A duty to make good any loss, damage or liability incurred by another; the right of an injured party to claim reimbursement for its loss, damage, or liability from a person who has such a duty. Can be used in the sense of indemnity forthcoming from one party to another in relation to liability for a claim or in the sense of indemnity granted under a policy of insurance.
Liability	The quality or state of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy.
Loss of Consortium/ Servitium	A secondary claim based on the loss suffered by a spouse of the primary claimant in respect of the partner's company, assistance and affection (or more literally, consort and service). This type of claim is generally very restricted.
Quantum	The required, desired, or allowed amount in relation to the claim. Simply put, what the claim is worth. Quantum is usually assessed by reference to the calculation of several "heads of damage" allowable in a claim with the object or purpose of such calculation to place the claimant in a position similar to that but for the injury or harm suffered.
Schedule of Damages	Not compulsory, but often sought from the claimant so as to assess the quantum of the claim. It provides an outline of the amount claimed for each head of damage and how it is calculated.
Strict Liability	Liability that does not depend upon actual negligence or intent to harm, but that is based on an absolute duty to make something safe.
Vicarious Liability	Liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) as a result of the relationship between the parties.

Heads of Damage	
Word	Explanation
<i>Fox v Wood Claims</i>	With respect to WorkCover weekly benefits, the decision of <i>Fox v Wood</i> requires that the component of income tax deducted from the weekly benefits be brought into account. On an award of damages the claimant must refund to WorkCover all money paid by way of weekly benefits including that component paid by WorkCover to the ATO on behalf of the claimant.
Future Economic Loss	A loss of wages or profits yet to be actually suffered. A claimant who suffers a permanent disablement and is not able to continue to work or is only able to work part time in their previous profession will suffer an identifiable weekly net loss with reference to other comparable employees. If unable to be calculated precisely, perhaps due to merely a disadvantage on the open labour market, a Court may award a “global” amount for this head of damage. The figure is otherwise calculated using multiplier tables to obtain the present value of a future loss. Superannuation can be claimed.
General Damages	Represents pain, suffering and loss of amenities or enjoyment of life calculated by reference to the degree of injury suffered. In Qld, it may be assessed under the <i>Civil Liability Act</i> pursuant to the ISV tables. In other states, legislation has similarly restricted the awards allowed under this head of damage.
Gratuitous Care	Care that is provided by a friend or relative of the claimant or plaintiff without the obligation to do so and without consideration. Often referred to as a <i>Griffiths v Kerkemeyer</i> claim having reference to the High Court decision allowing a right to such damages. This head can be calculated by reference to past and future loss with future loss again being calculated by reference to multiplier tables to obtain the present value of a future loss.
Injury Scale Value (“ISV”)	The value assigned to each injury under the Queensland Civil Liability Regulation 2003 in order to assess general damages. The value assigned is calculated on a sliding scale of monetary value between the maximum award allowable of \$250,000 to nil.

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Heads of Damage	
Word	Explanation
Past Economic Loss	A monetary loss already incurred such as lost wages or lost profits. Superannuation is also often included in a claim for damages as an adjunct to the main loss of wage, particularly in so far as any compulsory component of superannuation is concerned.
Special Damages	Damages that are alleged to have been sustained in the circumstances of a particular wrong; to be awardable, special damages must be specifically claimed and proved. Examples can include medication costs, treatment expenses, travel, leave, equipment, investment advice and management expenses. Special damages can be calculated by reference to past and future loss with future loss again being calculated by reference to multiplier tables to obtain the present value of a future loss.



Medical Terminology	
Word	Explanation
<i>American Medical Association Guide to the evaluation of permanent impairment 4<sup>th</sup> Edition (“AMA 4”)</i>	The 4 <sup>th</sup> Edition generally applies to injury claims under many Workers’ Compensation schemes in Australia.
<i>American Medical Association Guide to the evaluation of permanent impairment 5<sup>th</sup> Edition (“AMA 5”)</i>	A guide to the evaluation of permanent impairment utilised by independent medical examiners in order to provide an assessment of injury in a consistent manner. The 5 <sup>th</sup> Edition applies to personal injuries assessed under Common Law in Australia and is prescribed in some legislation schemes, for example, the <i>Queensland Civil Liability Act</i> .
Aggravation	Aggravation refers to a factor or factors that alters the course or progression of the medical impairment. It is the physical, chemical or biological factor contributing to the worsening of a pre-existing medical condition in such a way that the degree of impairment or severity of medical condition is increased <i>permanently</i> .
Disability	This is a function of the interaction of the individual and the environment.
Exacerbation	Exacerbation refers to a factor or factors that alters the course or progression of the medical condition. Exacerbation of a medical condition is only temporary and has no persistent effect on the injured person.
Maximum Medical Improvement (“MMI”)	A medical condition or state that is well stabilised and unlikely to change substantially in the next year with/without medical treatment as defined under the AMA Guides. In order for assessment under the AMA Guides to be undertaken of an injury the claimant must have reached MMI.
Permanent Impairment	Permanent loss of use or derangement of any body part system or organ.

The material contained in this publication is in the nature of general comment only, and neither purports nor is intended, to be advice on any particular matter. No reader should act on the basis of any matter contained in this publication without considering and, if necessary, taking appropriate professional advice upon his or her own particular circumstances.