

Property Damage Claims Guide

Information Sheet

Damage and Loss - Claims for Compensation

This guide is designed to help you understand the process for submitting a claim for compensation if you think the Department of Transport and Main Roads is responsible for causing damage to your property (like your car) or for some other type of loss.

Important Information

Independent legal advice & Disclaimer

The information provided in this guide is intended to be general in nature and should not replace independent legal advice tailored to meet your individual circumstances. Whether or not you are entitled to receive compensation from the department will depend on a broad range of factors and considerations. The Queensland Law Society can assist you to choose a legal representative.

Time limits

Strict statutory time limits apply to making a claim for compensation. Your legal representative can provide you with more information about what time limits apply to personal injury, property damage and other types of claims for compensation.

Insurance

Consider your insurance entitlements. Your insurance policy may cover the incident and you may choose to pay the applicable excess. In this instance your insurance company might then claim compensation from the department in your place.

Claims the department probably won't accept

The department will not ordinarily accept any claims for:

- damage to tyres with an aspect ratio (profile) of 40% or less, or damage to the associated rims
- damage due to debris (if it occurs in the normal course of driving)
- damage resulting from criminal actions
- damage resulting from extreme weather events
- matters already the subject of an insurance claim
- damage resulting from the actions of a third party.

Personal Injury

This guide and the associated claim form should not be used to submit a claim for compensation for personal injuries. These types of claims are covered by the *Personal Injury Proceedings Act 2002*. Generally speaking, you cannot make a claim for compensation unless it is in accordance with that Act. If you have suffered a personal injury as a result of something you think the department did or did not do, you should seek independent legal advice as soon as possible.

Lodging a claim for compensation

If you have suffered damage or loss from an incident on the road and you think it is our fault, you can submit a claim for compensation. All claims need to be in writing and must include full details of the incident.

Your claim may be submitted using the Claim Form. The Claim Form should not be used for a claim arising from a personal injury.

The Claim Form may also be used as a guide to tell you what type of information we require in order to assess your claim for compensation from us.

Our Responsibilities

Transport and Main Roads is required to maintain the road network under its control to certain standards. If we fail to maintain the road network or otherwise meet our legal obligations or responsibilities as a government agency, we may be liable to compensate you for any damage or loss sustained by you personally or to your property.

It is not possible to keep the roads in perfect condition all the time, nor can we be aware of hazards the moment they arise. Regular inspections conducted by our maintenance contractors help identify areas that need maintenance or repair.

The Department's inspection regime is determined by several factors like the road location (e.g. metropolitan or rural), the amount of traffic and the weather conditions. Also, when determining the department's level of responsibility or liability, the financial resources available to the department can be taken into consideration. In other words, Transport and Main Road's liability can be limited or avoided in circumstances where there was not enough funding to address a particular hazard. Please see the heading below called "Useful Information" for more information about this.

Similar obligations apply to other road authorities in respect of the roads for which they are responsible (for example, local governments).

Our Roads

Transport and Main Roads is responsible for over 33,000 kms of Queensland's road network. We call these roads, "State controlled" roads. We are also

responsible for installing and maintaining traffic signals, regulatory signs (e.g. stop signs) and line marking on all "State controlled" roads.

Our network includes all major arterial roads such as the Pacific Motorway and the Bruce Highway as well as many main roads across the state. All other roads are the responsibility of local government or private organisations (e.g. mining companies).

You can check whether the road, which is the subject of your claim for compensation is a "State controlled" road by referring to the maps set out by region on www.tmr.qld.gov.au.

Help us to help you

One of the best ways for us to find out about road hazards is through reports from our road users. If you see a hazard on a main road, such as a pothole, a damaged stop sign or traffic signal, please call us on 131940 and www.131940.qld.gov.au to report incident.

Road works

If you think the damage or loss you sustained is due to road works please highlight this on the Claim Form. If the department engaged an independent contractor to undertake the road works, it is likely your claim will be referred directly to them. In this event, the department may provide you with the relevant contractor's details.

The Law

It may be useful for you to understand the circumstances in which the department may be legally liable to pay you compensation and how the civil claims process operates generally.

The following information is provided as a guide only. As stated above, it is your responsibility to obtain your own independent legal advice on the department's potential liability.

The Common Law (also known as Case Law)

The department has a common law duty of care to road users to maintain the road network under its control. In general terms, the law of negligence provides for the existence of a duty of care; the standard of care expected; and whether loss or damage was suffered as a result of a breach of the duty.

If you think we have failed to meet our duty of care to you as a road user, then the law provides that the burden of proof rests with you. In other words, you will have to prove your claim.

In general terms, you will have to show that we have not taken reasonable steps to maintain the road network to prevent foreseeable risks of harm. "Reasonable steps" means considerations like whether we knew (or ought to have known) about the hazard, what resources were available to us and if there were any competing responsibilities on us at the relevant time (like other road safety projects).

You will also have to show that our actions (or inactions):

- caused the incident;
- caused you to suffer loss; and
- that such loss was foreseeable to us.

The Civil Liability Act 2003

The common law can be overridden by legislation. In this regard, the Queensland Parliament passed the *Civil Liability Act 2003*. This Act provides a framework for the law of negligence and some possible limitations on the department's liability.

As our maintenance contractors cannot be everywhere all the time, this Act provides (at section 35) that road authorities such as the department may not be liable for damage or loss arising from a road hazard, unless we had prior knowledge of the particular hazard. In other words, unless it can be shown that we were aware (or

ought to have been aware) of a particular road hazard, we may not be liable to pay compensation in relation to a particular incident on the road. Section 37 of that Act also sets out some important factors that are relevant to the department's liability.

You will also have to substantiate the extent of your loss by providing independent evidence (like receipts, etc).

It is important to keep in mind that if the department can demonstrate that it took all reasonable steps to maintain the road, it may avoid liability and may not be required to pay you compensation.

If your claim is denied by us, there are **no avenues for appeal within the department**. If you think you have a strong legal case supporting your claim, your next step is to pursue it through the civil courts. If you think you have been dealt with unfairly with respect to the administrative process followed by the department and/or the standards of service provided to you, you can contact the **State Ombudsman** or the **Queensland Association of Independent Legal Service** who may investigate your complaint.

What happens if I make a claim?

The best way to submit a claim is to complete a **Claim Form** or provide us with all relevant **information in writing together with supporting documents or information**. Once we receive your claim, we may ask for more information from you. Once we have everything we need, we will assess the claim and respond in writing to you as soon as possible.

If your claim is accepted by us, you may need to sign a Release or Discharge, which is, in general terms, a legal document that means you cannot make any further claims against the department or its contractors regarding the incident subject of your claim.