

# INJURED IN A CYCLING ACCIDENT?

Your Comprehensive FAQ guide to Claiming  
NSW Motor Accident Compensation.

**ADVANTAGE**  
LEGAL

*bicycle*  
NSW 

# Important Foreword

Advantage Legal is an award winning specialist personal injury compensation law firm in NSW Australia and the exclusive compensation legal partner of Bicycle NSW.

The purpose of this guide is to provide injured cyclists with general information about their entitlement to claim compensation under the NSW motor accident compensation scheme. The guide is not intended to be legal advice as it does not take into account your personal circumstances.

Readers should be aware that NSW motor accident compensation laws changes regularly. This guide has been prepared on 1 November 2023 following amendments to the NSW Motor Accident Injuries Act 2017 that came into force on 1 April 2023. If your cycling accident occurred before 1 April 2023, please be aware that different timeframes and entitlements will apply to your claim which are not outlined in this guide.

Please note that this guide is for educational purposes only. It is not a restatement of the totality of NSW motor accident compensation law. Any person relying on information contained within this guide does so at their own risk.

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# Your Cycling Injury Compensation Experts

## Leigh Davidson

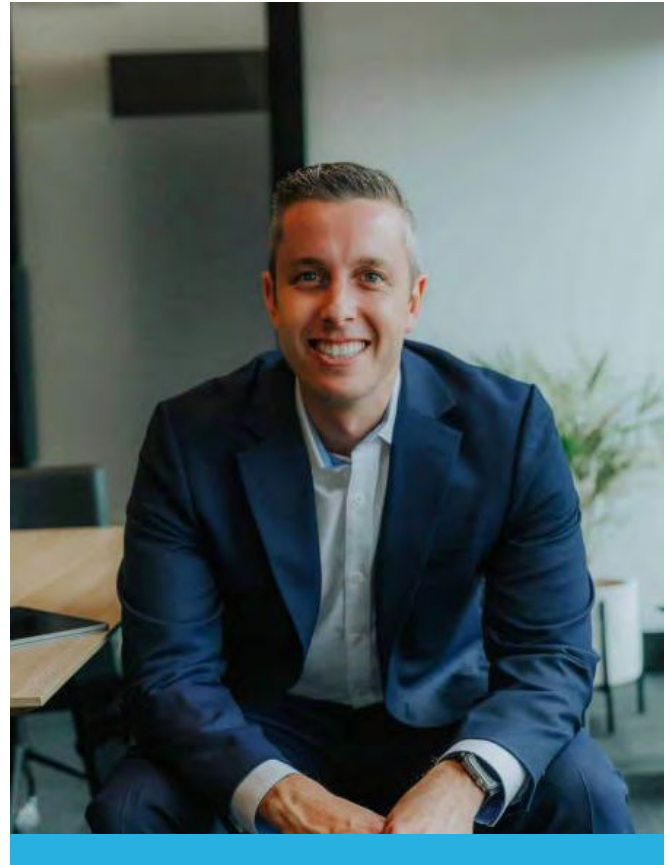
Leigh is one of the founding Principal Solicitors of Advantage Legal and has a passion for assisting injured people. He looks at every situation with a unique perspective, offering unconventional strategies that always involve thinking two steps ahead. It is this unique perspective that led to Leigh being awarded Australasian Lawyer Most Influential Lawyer 2022 and 2023 in the changemaker category.

Leigh has extensive experience working for compensation law firms and ASX listed insurance companies and is committed to improving the way compensation schemes operate in NSW. Leigh has appeared on multiple occasions before the NSW Parliament Legislative Council Standing Committee on Law and Justice to provide evidence on how the NSW motor accident compensation scheme could be improved to better serve injured people.

In addition to working as one of the Practice Principals of Advantage Legal, Leigh is an Accredited Specialist in Personal Injury Law, the Deputy Chair of the NSW Law Society Injury Compensation Committee and was previously a Decision Maker at the Dispute Resolution Service. He has a significant interest in bicycle safety and also how emerging technologies such as autonomous vehicles are changing the law.

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## Ana Jaglic

Ana is a founding Principal Solicitor of Advantage Legal. She is pragmatic and proactive in her approach to legal issues and is renowned for achieving exceptional outcomes for her clients.

Ana is an Accredited Specialist in NSW Personal Injury Law and has many years of experience working for plaintiff law firms, large defendant law firms and ASX listed insurance companies. She is a revered and well respected advisor and litigator who is committed to achieving exceptional outcomes for her clients. Ana has a particular passion for assisting people involved in complex and catastrophic personal injury claims.

Ana has previously worked as a Decision Maker with the Dispute Resolution Service and as a Claims Assessor with the Claims Assessment Resolution Service. Currently she is a cost assessor with the NSW Supreme Court. This experience has allowed her to develop an exceptionally well-rounded, cost focused and client-centric approach to law.

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# What can I claim for personal injury after a bicycle accident involving a motor vehicle?

In the majority of circumstances after 1 December 2017, if you've been injured in a bicycle accident involving a motor vehicle collision your claim will be pursued under the NSW motor accidents compensation scheme. The scheme provides:

- » Partial income replacement
- » Treatment expenses
- » Home and personal care
- » Funeral expenses
- » Lump sum compensation for economic loss and pain and suffering

The duration of your benefits depends on a range of factors including the date of your accident, the severity of your injury and whether you were at fault for the accident.

If your injuries aren't covered under the NSW motor accidents compensation scheme, they may be covered under other NSW insurance schemes or insurance policies. Depending on your accident circumstances this could include:

- » The NSW workers compensation scheme
- » A TPD insurance policy which is commonly provided by your superannuation fund
- » An income protection policy that you hold
- » A public liability policy held by a third party such as a local council
- » The personal accident or public liability insurance included with Bicycle NSW membership, if you were a member at the time of your accident.

## Where can I download an Application for Personal Injury Benefits?

The Application for Personal Injury Benefits can be completed online at [www.sira.nsw.gov.au](http://www.sira.nsw.gov.au) or by downloading the form and submitting it to the CTP insurer for the vehicle involved in your accident.

The Application for Personal Injury Benefits must be submitted to the insurer with a Certificate of Fitness completed by your General Practitioner or hospital. It is critical that this certificate is completed correctly and all injuries are individually noted.

Please read our FAQ called, [Where can I obtain a certificate of fitness?](#) for more information.

# What is an Application for Personal Injury Benefits & what can I claim?

An Application for Personal Injury Benefits is a claim form which commences a NSW motor accident injury claim against a Compulsory Third Party (CTP) insurer. The benefits available include income support, home and personal care and reasonable and necessary treatment expenses for anyone injured in a motor accident in NSW. This includes even if you were at-fault or contributed to the accident in some way.

People who have sustained an injury which is categorised as 'not a threshold injury' and who are also not mostly at-fault for the accident are entitled to benefits beyond 52 weeks. Injured cyclists fitting this category should be aware that:

- » Treatment and home care continues if it is considered 'reasonable and necessary' by the insurer. If your injuries are severe, this could be a lifetime entitlement.
- » Weekly income support ceases at 24 months after the accident unless an Application for Damages Under Common Law is made. Please read our FAQ called, [How long do I have to lodge an Application for Common Law Damages?](#)
- » All income support payments cease 5 years after the accident.

An Application for Personal Injury Benefits can be lodged for physical injuries, psychological injuries or both and needs to be supported with a Certificate of Fitness completed by your General Practitioner or hospital. Please read our FAQ , [What is a certificate of fitness?](#) for more information.

The Application for Personal Injury Benefits can be downloaded from [www.sira.nsw.gov.au](http://www.sira.nsw.gov.au).

# What is an Application for Damages Under Common Law & what can I claim?

An Application for Damages Under Common Law is a claim for lump sum compensation made on the CTP insurer of the vehicle who caused your accident. These claims are restricted to people who have sustained injuries which are considered 'not a threshold injury' and who were not at fault for the accident. The term 'threshold injury' is defined in NSW motor accident legislation.

Eligible people may be entitled to a lump sum pay out for:

- » Past economic loss
- » Future economic loss
- » Pain and suffering

## How long do I have to lodge an Application for Common Law Damages?

Common law damages claims are restricted to people who have sustained an injury which are classified as 'not a threshold injury' and who are not at-fault for the accident.

There are no time limits on lodging an Application for Common Law Damages, however entitlements to weekly payments cease 2 years after the accident if an Application for Common Law Damages is not lodged.

There are no time limits to commence proceedings in the Personal Injury Commission, however Court proceedings must be commenced within 3 years of the accident.

## Where can I download an Application for Damages Under Common Law Form?

The Application for Damages Under Common Law form is available at [www.sira.nsw.gov.au](http://www.sira.nsw.gov.au). This claim is lodged on the CTP insurer for the vehicle responsible for causing the motor accident. In most circumstances, this will be the same insurer who you lodged the Application for Personal Injury Benefits with.

The CTP insurer will not assist you to maximise your damages claim and will only provide general information about what you can claim. It is strongly recommended that you obtain legal advice before submitting an Application for Damages Under Common Law to ensure that you maximise your compensation entitlement.

## Can I lodge a bicycle accident personal injury claim in NSW if I cannot identify the vehicle that hit me?

If you were involved in a bicycle accident involving a motor vehicle and sustained injury but are unable to identify the vehicle involved, a claim can still be pursued. The NSW motor accidents compensation scheme allows for injured cyclists to pursue a claim against the 'nominal defendant' provided a due inquiry and search for the responsible vehicle has been conducted.

Due to the complexity of the process involved in lodging a claim against the nominal defendant, we strongly recommend that you obtain legal advice.

## Can I lodge a bicycle accident personal injury claim in NSW if the vehicle that hit me was uninsured?

If you were involved in a bicycle accident in NSW and sustained an injury, but the motor vehicle involved was uninsured, a claim for benefits and compensation can still be pursued. The NSW motor accident compensation scheme allows for injured cyclists to pursue a claim against the 'nominal defendant' in such circumstances.



Due to the complexity of the process involved in lodging a claim against the nominal defendant, we strongly recommend that you obtain legal advice.

## What is a Certificate of Fitness?

A Certificate of Fitness is a medical certificate that is provided to a CTP insurer when lodging an Application for Personal Injury Benefits or Application for Damages Under Common Law following a NSW motor vehicle accident. The certificate is completed by your nominated treating doctor or hospital and provides the CTP insurer with information regarding the injuries sustained in the motor accident, the treatment required and your fitness for employment.

The Certificate of Fitness is a critical document which a CTP insurer bases its decisions on regarding your entitlement to benefits and compensation. Unfortunately, due to the length and complexity of the certificate, it is regularly completed incorrectly by medical practitioners and hospitals.

Generally speaking, your CTP insurer will require a Certificate of Fitness every month in order to approve weekly payments, treatment, home care and personal care. In rare circumstances, where injuries are severe, a certificate of fitness may only be required every three months. If you believe this circumstance applies to you, you should discuss it with your CTP insurer in advance to prevent any issues with payment of benefits on your claim.

## Where can I obtain a Certificate of fitness?

The Certificate of Fitness is a medical certificate required to lodge a motor accident injury claim in NSW. It is the same medical certificate completed for workers compensation claims in NSW. Most General Practitioners and hospitals will have a copy of the certificate readily available when an injured person consults with them.

Alternatively, the Certificate of Fitness can be downloaded at [www.sira.nsw.gov.au](http://www.sira.nsw.gov.au).

## What is a threshold injury?

A 'threshold injury' is a concept defined in legislation, regulation and guidelines in the NSW motor accident compensation scheme. The concept creates an objective means of identifying and categorising injuries that should resolve within a defined period of time with little or no ongoing issues following a motor accident.

Threshold injuries are generally categorised into two forms:

- » Soft tissue injuries – usually described as 'whiplash' or 'muscular strain' type injuries; and
- » Minor psychological injuries – such as acute stress disorder and adjustment disorder.

Cyclists who have sustained a threshold injury are entitled up to 52 weeks of weekly payments, treatment and home/personal care.

Due to the complexity of the threshold injury definition, insurance companies regularly make incorrect decisions regarding whether a person has sustained a threshold injury or not. If unchallenged, this results in an injured person being precluded from pursuing a claim for damages under common law (i.e. receiving a lump sum pay out). If this happens to you, you could be foregoing hundreds of thousands of dollars in compensation.

If your CTP insurer has provided a liability notice stating that you sustained a 'threshold injury' we strongly recommend you obtain legal advice.

## What is a 'minor injury'?

The term 'minor injury' was defined in the NSW Motor Accident Injuries Act 2017 from 1 December 2017 to 31 March 2023. It was then replaced by the term 'threshold injury' on 1 April 2023, however has a similar definition.

Please read our FAQ "[What is a Threshold Injury?](#)" for more information.

## Who pays for my treatment expenses following a cycling accident involving a motor vehicle?

In most circumstances, to receive reimbursement for treatment expenses following a cycling accident, an injured cyclist will need to lodge an Application for Personal Injury Benefits on the CTP insurer for the motor vehicle involved in the accident, regardless of whether the cyclist was at-fault for the accident or not.

Please read our FAQ called, [What is an Application for Personal Injury Benefits & what can I claim?](#) for more information.

Unlike private health care or Medicare, you must request approval from the CTP insurer in advance of obtaining your treatment. The insurer will provide you with a written approval or denial within 10 days of receiving your request and will reimburse you the cost of the approved treatment within 20 days of receiving the receipt.

The exception to the above scenario is if your cycling accident occurred in the course of your employment. In such circumstances, your employer's workers compensation insurer will cover the cost of your treatment expenses, even if you lodge a claim on the CTP insurer as well.

Much like the CTP insurer, the workers compensation insurer needs to pre-approve your treatment expense before it is incurred. Failure to do so could mean that you are only partially reimbursed or not reimbursed at all.

## Can I obtain personal or home care following a cycling accident involving a motor vehicle?

In most circumstances, personal or home care can be requested from the CTP insurer for the motor vehicle involved in the cycling accident, regardless of whether the cyclist was at-fault for the accident or not. Eligibility, number of hours and duration of care are all assessed on a case by case basis either by the CTP insurer or the rehabilitation consultant assigned to assist with your claim. Generally speaking, the more serious your injuries are and whether you were at-fault for the accident, will determine your entitlement to personal and home care.

The exception to the above scenario is if your cycling accident occurred within the course of your employment. In such circumstances, your employer's workers compensation insurer may arrange for your personal or home care.

In both scenarios, pre-approval should be sought from the relevant insurer before the cost of personal or home care is incurred. Personal or home care must be provided by a commercial care organisation. Care provided by friends and family is not reimbursable by either the CTP insurer or workers compensation insurer.

## How do I lodge a personal injury claim following a bicycle accident involving a motor vehicle?

To lodge a motor accident injury claim following a bicycle accident in NSW, you'll need to:

- » Identify the CTP insurer for the vehicle involved in your accident.
- » Have your General Practitioner complete a Certificate of Fitness outlining your injuries, treatment requirements and capacity for employment. Please read our FAQ called, [What is a certificate of fitness?](#)
- » Complete an Application for Personal Injury Benefits and submit it to the CTP insurer.

Please read our FAQ called, [What is an Application for Personal Injury Benefits & what can I claim?](#)

If your accident occurred in the course of your employment, in addition to the above, you should:

- » Inform your employer of the accident immediately so that they can notify their workers compensation insurer.
- » Complete a workers compensation claim form.
- » Provide the claim form to your employer and/or employers workers compensation insurer.

Self-represented cyclists and medical practitioners frequently make errors when completing documentation required to lodge a motor accident injury claim in NSW.

We strongly recommend that you obtain an advice from an Accredited Specialist in NSW Personal Injury law before submitting your claim form to the relevant insurer.

If the accident occurred within the course of your employment, you may also need to consider whether to lodge a workers compensation claim in addition to your motor accident injury claim.

## How much is my damages claim worth?

Damages claims in the NSW motor accidents compensation scheme are restricted to cyclists who are not at-fault for the accident and who have sustained injuries which are not 'threshold injuries'. The claim is known as an 'Application for Damages Under Common Law'. The amount of compensation you are entitled to will depend on your age, the amount of time you are absent from employment, your income earning capacity both before and after the accident, whether your future income earning capacity has been impacted, the severity of your injuries and whether you are entitled to pain and suffering.

The Accredited Specialists at Advantage Legal believe that compensation is personal. We will tailor a strategic plan just for you and maximise your compensation claim by getting to know you and your personal circumstances.

Your damages claim is worth more with Advantage Legal representing you.

# The CTP insurer has denied liability for my statutory benefits claim. Can I dispute their decision?

In circumstances where a CTP insurer has denied liability for either whole or part of a claim, an injured cyclist has a right to dispute the decision. In the majority of circumstances, an injured cyclist will need to lodge an application for internal review with the CTP insurer as a first step.

If the insurer maintains its decision or fails to respond, a dispute application may be lodged with the Personal Injury Commission, where an independent decision maker (known as a 'Member') will make a determination.

Both the insurer internal review and dispute process with the Personal Injury Commission are difficult to navigate without knowledge of the NSW motor accident injury scheme and involve complex concepts of medical assessment and law.

If you wish to dispute an insurer's liability determination, we strongly recommend that you do so urgently with the assistance of an Accredited Specialist in NSW Personal Injury Law to ensure that your dispute is medically and legally correct based on your personal circumstances.

## What are the common types of cycling accidents in NSW?

There are a number of common motor accident scenarios involving cyclists in NSW. These include:

- » **Rear end accidents** – where a cyclist is hit from behind by a motor vehicle.
- » **Side impact accidents** – where a cyclist is hit from the side. This type of collision is common at roundabouts, T-intersections and traffic light-controlled intersections.
- » **Car door being opened** – where stationary motorists fail to check before opening their car door, resulting in a collision between a cyclist and their open door.
- » **Failure to give way at an intersection or traffic light** – where a motor vehicle fails to acknowledge a cyclist travelling through an intersection or traffic light resulting in a collision.
- » **Failure to keep a safe distance in accordance with NSW laws** – where a motor vehicle fails to leave 1 metre between a cyclist and their vehicle when travelling at speeds up to 60km per hour or 1.5 metres when travelling above 60km per hour resulting a collision and/or injury.
- » **Road rage or speeding cars in close proximity** – where a driver/rider loses their temper at a cyclist and deliberately speeds in close proximity to a cyclist out of anger or frustration resulting in a collision or injury.
- » **Failure to check blind spots when turning or changing lanes** – where a driver/rider accidentally or negligently fails to check their blind spot when changing lanes, resulting in a collision or injury to a cyclist.

## Do I have to report the accident to the Police?

NSW law requires people involved in a motor accident to report it to the Police in circumstances where:

- » The vehicles involved were towed or carried away (i.e. property damage occurred).
- » The people involved in the accident failed to exchange particulars.
- » If death or injury occurred.

In the context of a motor accident injury claim, NSW motor accident legislation requires an injured cyclist to report the incident to the NSW Police within 28 days.

If the Police attended the scene of the accident, or the hospital in the aftermath of the accident this typically qualifies as the incident being reported.

It is critical to obtain an 'event number' from the Police as this information will be required by the CTP insurer when the Application for Personal Injury Benefits claim is lodged.

Please read our FAQ called, [What is an Application for Personal Injury Benefits & what can I claim?](#) for more information.

## I hit a pothole with my bicycle and injured myself. Can I make a claim for personal injury compensation?

In circumstances where a cyclist collides with a pothole and no motor vehicle was involved, a claim cannot be pursued under the NSW motor accidents compensation scheme. It is worth considering whether other insurance schemes or policies apply based on the circumstances in which the accident occurred.

- » **NSW workers compensation scheme** – if the accident occurred in the course of employment, an injured cyclist may be eligible to make a claim under the NSW workers compensation scheme.
- » **Public Liability** – if the accident occurred as a result of the negligence of a local council or organisation responsible for the maintenance of the roads, a claim may be pursued against the negligent party. In most circumstances, the public liability insurance policy of the negligent party would respond to the compensation claim made.
- » **TPD, Trauma & Income Protection Policies** – Depending on the severity of the injuries sustained, an injured cyclist may be entitled to claim on TPD, trauma or income protection policies that they have taken out. TPD is the most common of these three policies as it typically included by default when you join a superannuation fund. As these are contractually based policies, the terms of the individual policy and the amount of coverage will determine the size of the financial entitlement and eligibility to claim.
- » **Bicycle NSW Insurance Policy** – As a member of Bicycle NSW, cyclists are provided with personal accident and public liability cover. Information regarding this coverage can be found on the Bicycle NSW website - <https://bicyclensw.org.au/insurance/>



## Do I need a lawyer to pursue a cycling injury claim against a CTP insurer?

If you've been involved in a motor accident whilst cycling, chances are you've sustained some pretty serious injuries. You'll be focused on recovering as quickly as possible and in most circumstances stressed about the financial wellbeing of you and your family if you are unable to go back to work. A motor accident takes a tremendous toll on an injured cyclist and quite often leaves you with permanent physical and psychological injuries.

There is no legal requirement to engage a lawyer to pursue a motor accident compensation claim in NSW. It is however strongly recommended to ensure you receive your full compensation entitlement.

An expert motor accident compensation lawyer, like the team at Advantage Legal, will spend time getting to know you, develop a tailored strategic plan for you and will maximise your compensation. We will also answer all your questions, check all insurer decisions and make sure that you get paid everything you're entitled to.

So, whilst it is not mandatory to engage a lawyer, failing to do so could cost you tens or even hundreds of thousands of dollars in compensation.

## I was injured whilst riding my bicycle for work. Do I lodge a workers compensation claim or a motor accident claim for my injuries?

If you were injured in a cycling accident involving a motor vehicle in the course of your employment in NSW, you may have compensation entitlements under both the NSW workers compensation scheme and the NSW motor accidents compensation scheme.

Due to the complexity surrounding overlapping entitlements under different statutory compensation schemes, it is strongly recommended that you seek an urgent legal advice to ensure that your rights and entitlements are protected. In many circumstances you may need to lodge both a motor accident injury claim and a workers compensation claim.

Be aware that different time limits apply to lodging claims for compensation in the NSW motor accidents compensation scheme and the workers compensation scheme:

- » **Motor accidents compensation scheme** – An Application for Personal Injury Benefits is required to be lodged with the motor vehicle's CTP insurer within 28 days of an accident to preserve all rights and entitlements.
- » **Workers compensation scheme** - A workers compensation claim must be lodged with your employer or their workers compensation insurer within 6 months of an accident, or within 6 months of the time you become aware of the injury.

## **I was injured in a motor accident whilst riding my bicycle on the way to/from work. Do I lodge a workers compensation claim or a motor accident claim for my injuries?**

In the majority of circumstances injured cyclists will not be covered by the NSW workers compensation scheme in NSW whilst travelling to/from work. The exception to this rule is for exempt workers such as Police Officers, Paramedics, Fire Fighters and Coal Miners and workers who can establish that there is a real and substantial connection between their employment and the accident which caused the workers injuries.

Due to the complexity of the legalities involved in bicycle accident claims travelling to/from work involving a motor accident, injured cyclists are strongly recommended to obtain urgent legal advice from a cycling accident injury expert.

### **What does No-Win, No-Fee mean?**

The term no-win, no-fee means that the law firm representing you will run your case and only get paid on successful completion. Injured cyclists should be aware however that not all no-win, no-fee protections are the same across the industry.

Some law firms only apply no-win no-fee to their professional fees and still require you to pay back disbursements if the claim is lost. Disbursements are expenses incurred in the running of your claim such as medical reports, accountant reports, investigator reports and Court fees. Disbursements can amount to tens of thousands of dollars in many circumstances, so it's definitely worthwhile reading the fine print of a no-win no-fee agreement.

Clients of Advantage Legal benefit from our no-win, no-fee promise. That is, if we take on your claim:

- » We're so confident we will win your case, that if for some reason we were unsuccessful, we'll completely waive our professional fees and disbursements.
- » We'll never ask you to pay up front. Our fees are only payable on the successful completion of your claim.

## **I was hit on my bicycle by a motor vehicle in NSW. Who pays for the damage to my bicycle, helmet, clothing and accessories?**

If you were hit by a motor vehicle and your bicycle, helmet, clothing or accessories were damaged you may be entitled to claim the cost back from the driver of the motor vehicle who caused the accident.

Typically, a driver will have either third-party property damage or comprehensive car insurance. In such circumstances, and if you're not at-fault for the accident, a claim is made against the driver's policy for the damage to your property.

If the driver was at-fault and did not have any form of property damage insurance, you will need to claim the cost of the damaged property from the driver directly. This involves issuing the driver with a letter of demand with sufficient information regarding the accident and the damage to the property to understand the loss sustained.

The driver may elect to pay or ignore your demand. If the demand is ignored, you must then commence proceedings in Court. In most circumstances legal proceedings will be commenced in the Local Court, however the jurisdiction may vary based on the value of the property that has been damaged.

## What experience do the lawyers at Advantage Legal have with personal injury claims involving bicycle injuries?

The Accredited Specialists at Advantage Legal have industry leading experience which includes:

- » Working as plaintiff lawyers representing injured people.
- » Working in insurance companies.
- » Working for law firms representing insurance companies.
- » Being appointed as Decision Makers with the Dispute Resolution Services to resolve disputes between injured people and insurance companies (or their lawyers).
- » Being appointed the Deputy Chair of the Injury Compensation Committee of the Law Society of NSW.
- » Making submissions to State Regulators and the NSW Government for the improvement of compensation schemes in NSW.
- » Appearing in NSW Parliament to give evidence to Parliamentary inquiries into the operation of compensation schemes.
- » Participating in stakeholder forums to provide feedback and to assist with the implementation and operation of the newly created Personal Injury Commission.
- » Speaking about technical areas of CTP claims at legal industry forums.

Most importantly, our team have been involved in hundreds of NSW cycling compensation claims and have achieved remarkable compensation outcomes

We believe that compensation is personal, which is why our team of experts will spend time with you to answer all your questions, develop a tailored strategic plan just for you and maximise your compensation, all on a no-win, no fee basis.

## What is a NSW Accredited Specialist in Personal Injury Law?

An Accredited Specialist in Personal Injury Law is a lawyer who has been recognised by the NSW Law Society as having a high level of expertise in laws relating to personal injury in NSW. Accredited specialists have undertaken and passed a rigorous assessment process to attain their accreditation. Lawyers who hold the NSW Law Society Specialist Accreditation represent the best lawyers in the state.

Both Practice Principals of Advantage legal have extensive backgrounds in personal injury law, having worked for both insurance companies and compensation law firms. Additionally, they have served as decision makers at the Dispute Resolution Service (now known as the Personal Injury Commission) and are Accredited Specialists in Personal Injury Law.