



## Too much Festive Season Tipple can cost you more than your Licence!

***The Christmas and New Year holiday season is a time for travelling either locally or overseas, for celebrating the end of the year with workmates and most importantly for catching up with family and friends. It's also a time when you may drink more than you ordinarily do and even take something you've never tried before. The consequences of this can be far greater than you might think if you have an accident or are injured while affected by alcohol or drugs.***

The loss of licence and fines imposed for driving under the influence of alcohol or prohibited drugs are severe and well known and losing the right to drive for an extended period of time can have a major effect on curtailing both your ability to work and socialise. What is perhaps not as widely appreciated is the exclusionary impact that being affected by alcohol and drugs can have on your insurance cover if you're involved in an accident or injured whether while driving, travelling or involved in other activities.

### What are Insurance Exclusion Clauses?

Most insurance policies will generally contain three main provisions being:

1. An insurance clause - which describes in broad terms the type of cover provided and its scope;
2. Conditions - which set out any responsibilities the insured person has to comply with; and
3. Exclusions - which are clauses stating what actions are not covered under the policy.

Exclusions clauses will usually identify any specific circumstances, events or types of losses that will absolve the insurer from their obligation to indemnify the insured person. Generally, courts have interpreted exclusion clauses according to the ordinary and natural meaning of the words contained in them, read in light of the insurance policy as a whole. Many policies also include a "definitions section" in which the words contained in exclusion clauses are defined. If the words in the exclusion clause clearly and unambiguously exclude liability then the insurer will not have to payout any claim.

### Alcohol and Drug Exclusion Clauses

Exclusion clauses in insurance policies in relation to alcohol and drugs will generally contain a provision similar to the following;

*"We will not pay under any circumstances if you are under the influence of any intoxicating liquor or drugs, except a drug prescribed to you by a Medical Advisor and taken in accordance with their instructions".*

Being "under the influence of any intoxicating liquor or drugs" can have varying interpretations in different types of insurance policies and while it may seem far-fetched, your insurance cover for a claim could be void after having just a single drink! The fine print in insurance policies is known as the Product Disclosure Statement (PDS) and some insurers



specify in their PDS how much alcohol or drugs you can have before voiding your cover for a claim. Other insurers rely on the broad terms of the exclusionary wording and will determine whether your cover for a claim is void based on how much drinking or drug taking contributed to the accident or injury. In respect to accidents involving motor vehicles nearly all insurers apply the same threshold as the Police enforce for drink and drug driving offences.

## **What's the potential impact on my Insurance Cover?**

Here's how your insurance cover may be affected if you're involved in an accident or are injured after consuming alcohol or drugs:

### ***Motor Vehicle Accident Damage Insurance***

Car Insurance is a great thing to have in order to cover you for any damage to your vehicle or another party's vehicle (if you are at fault) in a motor vehicle accident. However, there isn't a car insurer in the world that will cover you if you are affected by alcohol or under the influence of drugs at the time the accident occurs. For L and P Platers in NSW this means having a zero percent blood alcohol concentration and for those drivers on their full licence having a blood alcohol reading of below 0.05%.

In the event that a driver's blood alcohol concentration is greater than the prescribed level their insurance claim cover is usually void meaning that their insurer will not pay any claim for repairs or the replacement of any vehicle involved in the accident. Understandably this imposes a significant financial penalty on the insured driver in addition to any drink and drug driving penalties applicable under the NSW Road Transport Act.

### ***Travel Insurance***

Many people use the holiday season to travel and for numerous overseas travelers immersing themselves in new cultural experiences is part of their travelling adventure. This often involves the consumption of alcohol and in some cases concoctions and other substances which are unfamiliar in terms of both taste and potency. Having Travel Insurance is a good idea to avoid massive hospital bills if you are injured in an accident overseas, however the majority of travel insurance policies contain an alcohol and drug consumption exclusion clause which generally results in the policy claim cover being voided and the insured left to pay from their own pockets the substantial medical bills which their insurer won't cover.

### ***Workers Compensation Insurance***

The end of the working year signals the advent of the Christmas party season when work colleagues let their hair down and celebrate their friendships and achievements at work over the course of the year. But end of year work parties can also have a dark side – things can get out of hand after a few too many drinks and people can get hurt. In most cases workers are covered under their employer's Workers Compensation Policy at work functions as the legal liability of employers for the conduct of their employees extends to these situations. However, if an employee engages in illegal or risky activities at a work function this can lead to the denial of compensation depending on the circumstances involved. As an example, an employee engaged in risky activity at a work function by diving into a river and injuring themselves. The court considered that their behavior was such a risky activity that the employee's claim for compensation was denied.

### ***Income Protection Insurance***

Income Protection insurance provides wage or salary continuance when serious illness or injury prevents you from being able to earn an income for a period of time. The insured is generally paid a portion of their standard income



depending on the type of cover taken out. Most insurers will not however pay a claim if the insured has been injured due to consumption of alcohol or drugs including while driving.

## ***Accidental Death and Injury Insurance***

This type of policy covers you for death or injury caused by an accident covered under the policy. It does not cover other causes of death or injury and because it is “accident based” a policy of this type nearly always contains an exclusion relating to accidents that occur whilst the insured is under the influence of alcohol or drugs.

## ***Life and TPD Insurance***

Life or term insurance products are designed to provide lump sum payments to your loved ones or your estate when you pass away. Total and Permanent Disability insurance cover (often referred to as TPD insurance), covers you against the possibility of not being able to ever work again due to a severe injury or illness. Most Life Insurance and TPD policies typically cover any cause of death including if you’re affected by alcohol or drugs at the time of death or injury. However, it’s prudent to carefully check for this in your policy exclusion provisions at the time you are taking it out or reviewing your policy cover.

## **Disputing Excluded Claims**

Most insurers engage lawyers that are experts in the Insurance field when preparing their Product Disclosure Statements so as to ensure that they are able to refuse to pay a claim if the insured person acts in a manner that invokes the operation of an exclusion clause under the policy.

However, exclusion clauses may be ineffective if the interpretation of them in their ordinary and natural meaning creates an absurd result or defeats the whole purpose of the insurance policy. There are also statutory limitations which can limit the harshness of some exclusion clauses to a certain extent. Section 54 of the Insurance Contracts Act 1984 prevents an insurer from refusing to pay out a claim which is otherwise within the scope of the policy purely on the basis of an act or omission of the insured which did not cause or contribute to the loss. In these circumstances the insurer will generally only be able to reduce the claim in proportion to the extent that their interest was prejudiced as a result of the act or omission.

While there are many reasons to celebrate the festive holiday season with workmates, family and friends and to enjoy the time away from work to travel, it’s also very important to be fully aware of the exclusion provisions in your insurance policies particularly those exclusions relating to accidents or injuries suffered after consuming alcohol and drugs.

***If you have a dispute with your insurer about the non-payment of a claim made under any insurance policy or require further information about exclusion clauses please contact [Ken Gray](#) or [John Bateman](#) on (02) 4731 5899 or email [litigation@batemanbattersby.com.au](mailto:litigation@batemanbattersby.com.au).***