



*Insight. Commitment*

**Directors:** Sean Kelly LLB, MBA, M Tax Law  
Stephen Byrne  
Richard Callaghan LLB, Acc. Spec. (Fam.)  
Paul Kelly LLB  
**Senior Associates:** Sean Russell BCom, LLB (Hons)  
Elspeth Ledwy LLB, BEc, LLM  
Raf Melerski LLB, B Com  
**Solicitors:** Jane Deguara LLB (Hons), BA  
Shaun Spada LLB

Our ref: EKL:KS  
Contact: Elspeth Ledwy  
Direct phone: 07 4911 0519  
Email: elspeth.ledwy@kellylegal.com.au

2 August 2012

The Research Director  
Finance and Administration Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

By email to: [fac@parliament.qld.gov.au](mailto:fac@parliament.qld.gov.au)

036

**RECEIVED**

02 AUG 2012

Finance and  
Administration Committee

Dear Committee Members

We write in relation to your review and inquiry into the operation of the Queensland Workers' Compensation Scheme.

We regularly act for people injured in the course of their employment and assist them in obtaining compensation to allow them to get back on track after injury.

The Queensland Workers' Compensation Scheme is the most financially sound scheme in the country. Its funding ratio is the highest in the country, and over the last 15 years, the premiums in Queensland have been, on average, the lowest in the country as well.

The main reason for the Queensland scheme's financial stability is a short tail no fault statutory scheme, balanced with access to common law for meritorious claims.

In the past, there have been suggestions made that the ability of an injured person to sue their employer at common law should be restricted by an impairment threshold. Any move to an impairment threshold would put the financial health of the existing scheme at risk. It would, for the first time, make the Queensland scheme a pension based scheme. That type of scheme has demonstrably failed in other States.

Providing you with excellence in all areas of the law.

Property and Development Law  
Family and Defacto Law  
Personal Injury Law  
Construction and Building Disputes

Commercial and Company Law  
Commercial Litigation  
Estate Planning  
Will Disputes and Family Provision Claims

Mining and Rural Services  
Dispute Resolution  
Business Services and Leasing  
Wills and Powers of Attorney

Level 1, City Court 78 Victoria Street (PO Box 1035) Mackay QLD 4740  
Telephone: (07) 4911 0500 Facsimile: (07) 4911 0599 Web: [www.kellylegal.com.au](http://www.kellylegal.com.au)  
Kelly Legal Pty Ltd ABN 15 125 481 361  
Individual liability limited by a scheme approved under professional standards legislation.

The existing common law scheme in Queensland weeds out most unmeritorious claims through:-

- Restrictions on damages and legal costs which mean that only financially viable claims where an injured person has suffered loss of income are likely to be pursued;
- Tough liability provisions bringing a common-sense approach to assessments of liability;
- Tough fraud provisions in the WorkCover legislation.

This collection of measures has delivered financial stability while ensuring that injuries which have had a significant financial impact on a person are able to be pursued and compensated. An impairment threshold would inevitably operate unfairly. Impairment, as described under AMA Guidelines, is not a reflection of the ability of the person to work or the financial impact on that person. It is a technical medical assessment of limited scope.

Some low impairment assessments can lead to significant financial loss. Conversely, some higher impairments can lead to only minimal loss. For example:

- A client has finished grade 12 at school and entered into a trade;
- They have successfully worked at that trade/labour intensive role for many years acquiring a skill set which puts them ahead of other potential employees;
- Due to a workplace incident, injuries have been sustained, often considered to be a 3-8% whole person impairment;
- This often results in one of the following scenarios:
  - The client has a reduced capacity to work overall;
  - The client can continue with "ordinary hours" however can't continue with the overtime hours which previously provided ongoing reliable income;
  - The client is left vulnerable in the open job market, particularly in a region where a "fly in fly out" workforce is prevalent and increasing
- These outcomes leave the client and their family without income often amounting cumulatively to hundreds of thousands of dollars.
- These outcomes are prevalent, *regardless* of the percentage of impairment suffered according to the AMA guidelines. This is often the case for labour intensive roles where any impediment to physical capability can lead an injured worker to significant financial hardship.



In relation to the other Terms of Reference being considered by the Committee, there are some specific likely regional impacts. Workers in regional areas travel significant distances to and from work. This is an essential part of working in these communities. It is therefore essential to maintain the "journey claim" provisions in the existing Queensland legislation.

We submit this for the Committee's consideration.

Yours faithfully

*Kelly Legal*

Per

