

OUR REF:  
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CONTACT: Aaron Clark  
DIRECT LINE: 07 3334 2855  
EMAIL: aclark@trilbymisso.com.au

The Research Director  
Finance & Administration Committee  
Parliament House  
George Street  
Brisbane QLD 4000

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By e-mail: [fac@parliament.qld.gov.au](mailto:fac@parliament.qld.gov.au)

Dear Committee,

**Review of the Operation of the Queensland Workers' Compensation Scheme**

I write in relation to the inquiry of Queensland's workers' compensation scheme to be undertaken by the Finance and Administration Committee.

I am a personal injury solicitor and have been fortunate enough to have acted in a defendant insurance role prior to acting for injured workers. Most notably during my career I have had the opportunity to represent clients prior to the last round of amendments being introduced into the *Workers' Compensation and Rehabilitation Act 2003*. Due to this, I am able to comment on how these are reducing unmeritorious claims, ensuring the financial viability of the scheme and appropriately compensating injured clients.

The Short Tail Scheme

One of the enviable features of the scheme is the short tail no fault statutory scheme that encompasses the opportunity to bring a common law claim should the claim be meritorious. This allows for finality and closure for the injured plaintiff and dramatically reduces the likelihood of injured workers remaining on statutory benefits as per a long tail scheme; which has shown in other states to be detrimental to the financial health of those schemes.

Certainly, the workers' compensation scheme has proven to be a financially sustainable scheme as evidenced by the reporting from WorkCover Queensland in its annual reports. It should be noted that while the full impact of the reforms introduced cannot be properly quantified, the data WorkCover Queensland has been provided to date does suggest an overall decrease in the amount of common law claims being pursued.

The receipt of a lump sum does not always adequately compensate an injured worker for the effect of their injuries but allows them to take control and in many cases moves them from being reliant on a social security benefit towards improving their position such as allowing them to be able to retrain and move back into a more suitable type of employment.

It should also be remembered that the injured worker also has to repay the benefits received by way of social security, Medicare and the like as part of any settlement, reducing the burden on the taxpayer. A removal of the common law rights will in a lot of cases, pass the burden from an insurance arrangement to a taxpayer funded arrangement. This is in a State where the employer has one of the lowest rates of premium to be paid per worker in Australia.

The last round of amendments, along with some already existing features of the scheme have also reduced the number of unmeritorious claims through:

- introducing tougher liability provisions and removing the civil right of action based on a breach of statutory duty;
- restricting the damages payable (creating the situation where only financially viable claims are pursued); and
- keeping restrictions on legal costs being recoverable (which again means that only financially viable claims are pursued).

I can say from someone acting for injured workers, this has had the effect of reducing the number of financially viable claims.

#### Thresholds

Of concern, however, is the possibility of an introduction of a threshold impairment requirement in order to bring a common law claim.

Such a threshold would create an inequity in the system and fails to take into account what is one of the main features of a common law claim; compensating people based on their levels of disability.

In relation to this, I have acted for many clients that have, according to the AMA Guides 5<sup>th</sup> Edition had 1-2% back injuries. While this impairment seems to be minimal these clients had worked their entire lives in occupations that were heavier in nature and as a consequence of their injuries, lost significant amounts of time off work, were unable to return to their pre-accident employment and suffered financial and emotional distress.

Simply put, impairment is simply not an indicator of an injured worker's level of disability.

In conclusion, the scheme as it currently stands does balance the needs of the injured worker while providing affordable insurance coverage for employers. I submit this for the Committee's consideration.

Yours faithfully

**TRILBY MISSO LAWYERS**



**Aaron Clark**  
Senior Associate