

Basic rundown on how it operates

- Which Act applies depends upon the date of injury.
- The *WorkCover Queensland Act* covers injuries occurring between 1 July 1997 and 30 June 2003. Such claims are now very rare.
- The *Workers Compensation and Rehabilitation Act* covers injuries occurring on or after 1 July 2003.
- If you are a worker, as defined by the Act, the only claim for personal injury that can be made is under the Act.
- Workers compensation claims have two potential limbs, the statutory limb and the common law limb.
- The statutory limb is no fault and applies to all claims. Upon lodgment of a workers compensation claim, WorkCover assess two criteria, being 'worker' and 'injury'.
- 'Worker' includes employees and many contractors. Determination of 'injury' will depend upon whether employment was a significant contributing factor.
- If WorkCover accepts worker and injury, then the injured worker is entitled to statutory compensation, which comprises reasonably necessary medical expenses and lost wages, the amount of which is determined in accordance with the Act.
- Statutory compensation continues until the claimant's condition is assessed as stable and stationary.
- Once the claimant's condition is assessed as stable and stationary, an assessment of work related impairment (WRI) is made, generally by a WorkCover appointed doctor. A lump sum offer is then made to the claimant based upon the WRI assessment (the Notice of Assessment).
- If the WRI is over 20%, then the claimant is able to accept the lump sum offer and then pursue a common law claim against his or her employer.
- If the WRI is under 20%, then the claimant needs to make an election. If he or she accepts the lump sum offer, then no common law claim can be brought against the employer and the claim is finalised. If he or she rejects the lump sum offer, then a common law claim can be commenced against the employer, however if unsuccessful, the claimant is not entitled to the lump sum offer.

Common Law Workers Compensation Claims

- A common law workers compensation claim can only be commenced once the statutory claim is finalised.
- It is commenced by serving a Notice of Claim for Damages in accordance with section 275 of the Act. Like the PIPA Part 1 & 2 Notices of Claim, a specialised form has been devised to capture all of the information required to be provided under section 275 of the Act.

Interaction between PIPA and WCRA

- Occurs where there are multiple respondents' – employer and non employer(s). The employer claim is governed by WCRA and the non-employer claim by PIPA.
- As mentioned earlier, the pre-court processes, although governed by different legislation, are largely the same. In practice, they quite often overlap with contribution notices directed between respondents', mutual disclosure agreed to and a joint conference ultimately held.
- The main difference between the regimes is in the issuing of the respective Notices of Claim. PIPA requires the Notice of Claim to be served within one month of seeing a solicitor, or nine months of injury, whereas the WCRA does not allow a Notice of Claim to be served until the condition is stable and stationary.
- This often leads to significant delay for the PIPA respondent, as a PIPA Notice of Claim may be served within a month or two of injury, with the WCRA Notice of Claim not served until as long as three years after the injury. There is no requirement that the WCRA Notice of Claim be served within a certain time period of the injury becoming stabilised. A claimant simply needs to ensure that the WCRA Notice of Claim is served before the expiration of the three year limitation period.

Contribution between employer and non-employer respondents

- If the claimant pursues a claim against his / her employer only, as mentioned earlier, the WCRA allows for WorkCover (as insurer of the employer) to issue contribution notices to other parties.
- The contribution notice is to be issued within 20 business days of receipt of the Notice of Claim, otherwise with the agreement of all parties, or, failing that, the court's leave is required for the contribution notice to proceed.

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