



A GUIDE TO QUEENSLAND WORKERS' RIGHTS

TRILBY
MISSO
LAWYERS

UPDATED JANUARY 2024

Understanding your rights with Queensland's WorkCover System

We're here to help you through the confusion

IF YOU FIND THE WORKCOVER QUEENSLAND ("WORKCOVER") SYSTEM UNFAMILIAR AND A LITTLE INTIMIDATING, WE'LL HELP YOU UNDERSTAND IT, GUIDE YOU THROUGH IT, AND ENSURE YOU RECEIVE THE JUSTICE AND THE COMPENSATION TO WHICH YOU ARE ENTITLED.



The law is here to guard your rights, and we are here to help you understand and pursue them.

If you have been injured at work, while traveling to or from work, or you are a dependant of a worker whose work-related injuries caused their death, you may be entitled to benefits and compensation.

However, to obtain any form of compensation, you must know your rights.



The WorkCover Queensland compensation runs on a 'No-Fault' (Statutory Claim) system where everyone is entitled to assistance under the WorkCover Queensland Scheme.

If your employer is at fault or has been negligent in providing a safe workspace, you are entitled to pursue a Common Law claim, where you seek damages for your injuries.

Statutory Claims Explained

The Worker's Compensation and Rehabilitation Act 2003 ("the Act") establishes a compensation scheme for Queensland.

What is a Workplace Injury, and Who Can Claim?

A workplace injury is defined by the Act. Workplace injuries can range from catastrophic damage to strains and sprains, including repetitive strain injury (RSI). A workplace injury under the Act can also include a disease contracted in the course of employment, loss of hearing, an aggravation of a pre-existing injury/disease or medical condition.

If you have sustained an injury at work, on your way to, or from, work and are a "worker" as defined by the Act, you may be entitled to WorkCover benefits and lump sum compensation.





In addition, WorkCover benefits and lump sum compensation may be available under the Act for the dependant/s (as defined by the Act) of a deceased worker if their death was a result of injury or disease when their employment was a significant contributing factor to causing the injury/disease.

Under a statutory claim, you can apply for workers' compensation benefits, **regardless of who or what caused the work-related injury.**

Benefits under this 'no fault' system may include:

- hospital and medical expenses
- lost wages
- travelling expenses
- rehabilitation treatment
- lump sum compensation payment for permanent impairment.



When WorkCover finalises your Statutory Claim

WorkCover will continue to work with you directly until such time as they determine that your work-related injuries have reached their maximum medical improvement, meaning that they are unlikely to improve with further medical or surgical treatment and that suitable rehabilitation has been carried out.

It is at this time that your Statutory Claim will be finalised and WorkCover should provide you with a **Notice of Assessment**. This document provides valuable information such as the **statutory Lump Sum Offer** and your **Degree of Impairment (DOI)**.



Lodging a Statutory Claim with WorkCover

Lodging a statutory claim can be complicated, and WorkCover's Customer Advisory Team, who often undergo limited training, may neglect to inform you of your rights including **your entitlement to lump sum compensation** and **your right to appeal an offer**. Misinformation and mistakes in the claims process could mean that you lose thousands of dollars in potential damages.

Common mistakes include:

- Failing to report the injury in a timely manner.
- Poor record keeping.
- Non-compliance to medical advice.
- Inconsistency in the specifics of the accident and injury.
- Failing to seek professional legal advice.

A failure to seek legal advice is one of the most common mistakes people make when making a WorkCover claim. The reality is that many people are lulled into a false sense of security by insurance companies who seem eager to 'help'. However, the complexity of the system and limited knowledge, means that agents will often neglect to tell you of your rights and full entitlements to compensation or damages.



Making a WorkCover Claim

Making a WorkCover claim can be overwhelming at a time that you are already struggling to come to terms with a workplace injury and the impact it is having on your and your family's livelihood.

If you find yourself wondering whether you are receiving the right advice from your WorkCover Customer Advisor, or you are confused about the process, you are not alone.

The following steps you take throughout your statutory claim may directly impact your common law rights so **it is important that you seek independent legal advice early.**

WE CAN HELP

Here is a list of commonly asked questions in relation to WorkCover and the process of moving from a Statutory Claim to a Common Law Claim. Call our Trilby Misso team to talk through these commonly asked questions

1. How did WorkCover calculate my weekly wages?
2. How long will it take for WorkCover to process my Application for Compensation?
3. How can I disagree with WorkCover's method of calculating my weekly wages?
4. How do I have an additional injury (physical or psychological) included in my already accepted claim?
5. How do I appeal WorkCover's decision to reject an additional injury (physical or psychological)?
6. WorkCover have cut me off from receiving weekly wages, what do I do now?
7. WorkCover are sending me to an independent medical examiner (IME), what do I expect?
8. I have received my Notice of Assessment and disagree with the percentage of permanent impairment. What should I do?
9. WorkCover are sending me to the Medical Assessment Tribunal, what does that mean?
10. Should I have legal representation at the Medical Assessment Tribunal?
11. Is the Medical Assessment Tribunal's decision final?
12. I am having difficulties with my WorkCover Customer Advisor. What should I do?
13. Are there timeframes that I need to consider when making an Application for Compensation or appealing a decision that WorkCover has made?



Statutory Claim Time Limitations Apply

Generally, an Application for Compensation should be lodged by the claimant **within 6 months** after the entitlement to compensation for the injury arises.

In addition, there may be other critical timeframes for submitting documents or appealing decisions throughout the Statutory Claim process.

Common Law Claims Explained

If you've been injured at work, and its due to the negligence of your employer, or a co-worker, you may be able to obtain workers' compensation benefits and damages to which you are legally entitled.

Most claimants start with a Statutory claim, and move on to a Common Law claim, if their employer is at fault. It is particularly important to seek legal advice with respect to a common law claim if you have been left with a permanent impairment.

Common Law claims must be lodged within three years from the date of the injury, and damages can include payments for pain and suffering, past and future loss of income (including superannuation), treatment and other expenses, and pain and suffering.

Common Law Claims Explained

Will I be suing my employer if I proceed with a Common Law Claim?

Your employer is insured for the cost of these claims by WorkCover Queensland, or some large employers have their own and are self-insured.

A common law claim for damages is a process that involves preparing and serving a detailed Notice of Claim outlining details of the incident, the injuries sustained, the amount of damages you are seeking and the reason/s you say your employer is negligent.

Generally, the lump sum offer made in your Notice of Assessment is far less than you are likely to receive in a claim for common law damages.

The Common Law Process

Notice of Claim (NOC)

Served upon WorkCover and a copy to your employer



Compliance (10 business days after WorkCover receives NOC)

Solicitors for WorkCover advise whether Notice of Claim is compliant



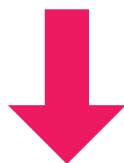
Liability response (within 6 months after a complying NOC is received)

WorkCover and their solicitors will investigate the circumstances of the incident and your injuries



Compulsory Settlement Conference

Claimant and WorkCover (with legal representatives) meet in an attempt to settle the Common Law Claim at a compulsory settlement conference



Litigation

A very small percentage of claims end up in court

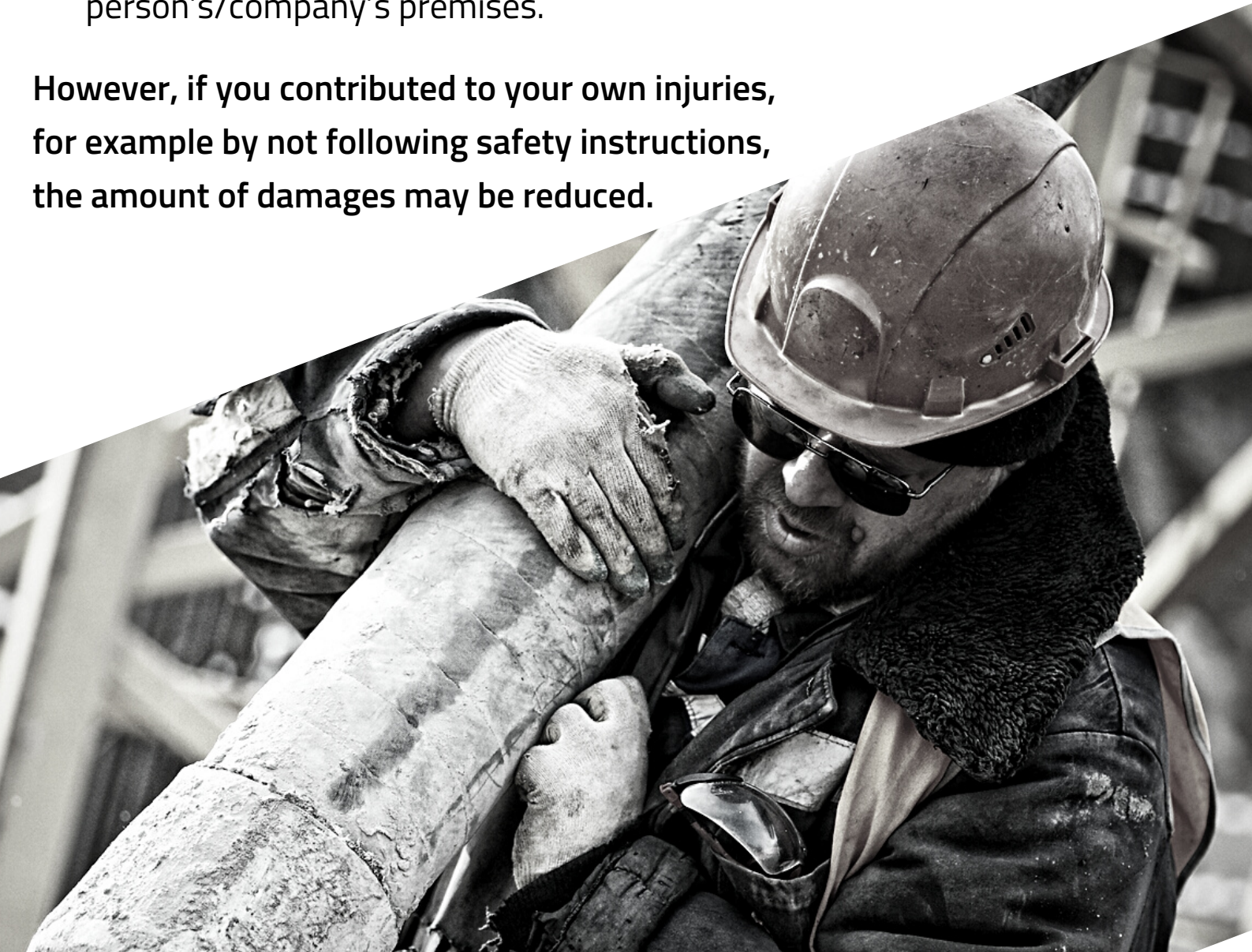
Other Parties/Contributory Negligence

If negligence by another party/other parties has contributed to your injuries, as in the case of an accident caused by faulty equipment supplied by a third party, they may be required to contribute to your damages claim.

An example of times when another party may need to contribute to your damages claim:

- An accident caused by faulty equipment supplied by a third party;
- Your employer is an employment agency, and you work with a host employer;
- You are injured during the course of your employment on another person's/company's premises.

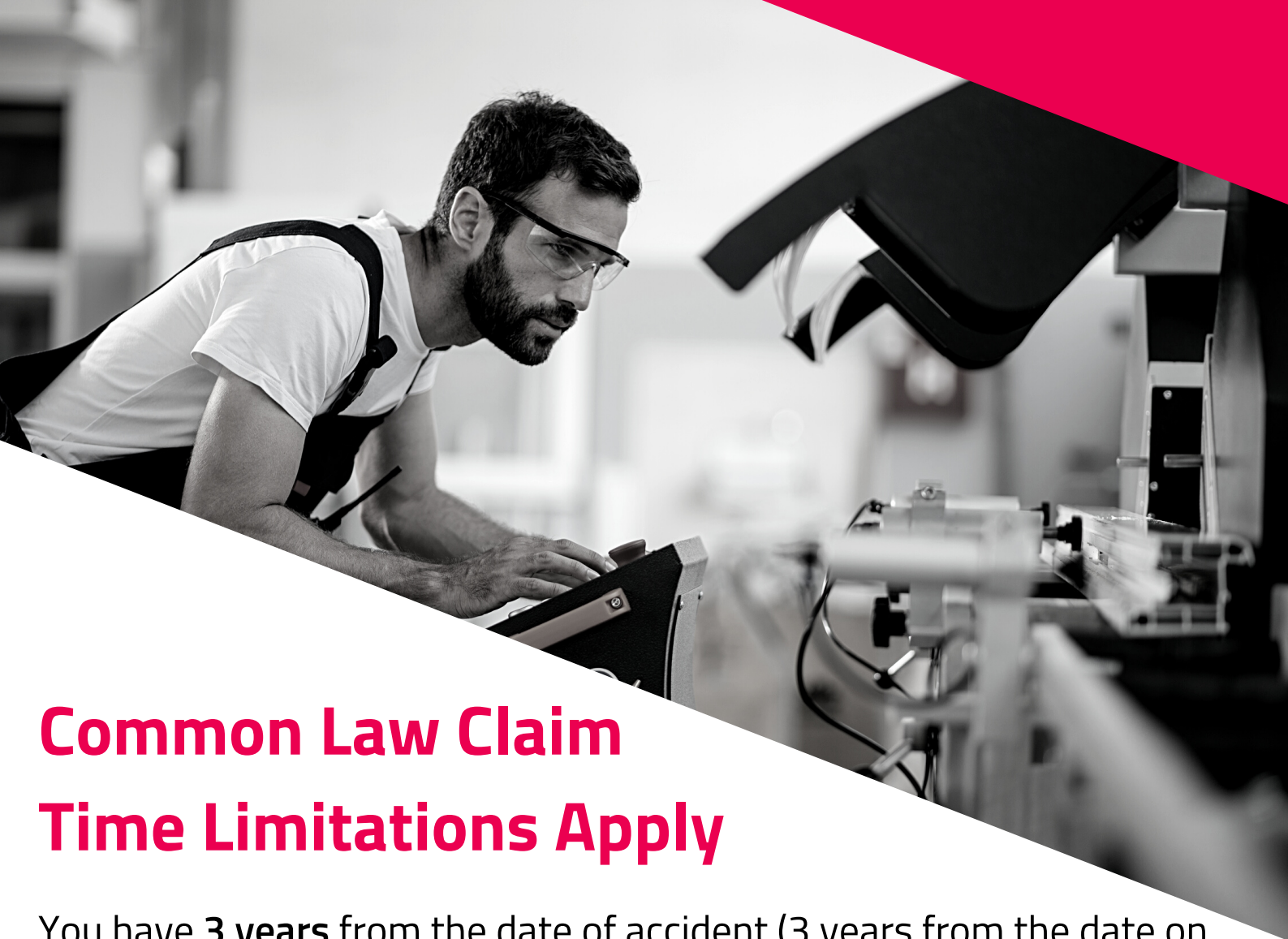
However, if you contributed to your own injuries, for example by not following safety instructions, the amount of damages may be reduced.



WE CAN HELP

Here is a list of commonly asked questions.
Call our team to talk through these questions.

1. I'm not sure whether my employer was negligent. How can I be sure?
2. I don't want to lose my job. Will my employer terminate my job if I bring a common law claim?
3. Will my co-worker get into trouble for causing the incident?
4. How long will a common law claim take?
5. What if I can never work again?
6. Will the common law process be intimidating?
7. I have sustained a work-related physical injury but I think I am feeling anxious and/or depressed. What do I do?
8. How much money will I receive if I pursue a common law claim?
9. Will I be left out of pocket if I pursue a common law claim?



Common Law Claim Time Limitations Apply

You have **3 years** from the date of accident (3 years from the date on which the cause of action arose) to submit a complying Notice of Claim to WorkCover, otherwise you may lose all rights to claim for damages.

Injuries/diseases sustained over a period of time can add a level of complexity to determining the relevant limitation date.

In addition, there are many other critical timeframes for submitting documents or appealing decisions throughout the statutory and common law claim process.

Legal advice is highly recommended before lodging a Common Law Claim in Queensland. If you would like help in doing this, please call our Client Care team.

Free 15 Minute Claim Checker Chat

Are you confused by what to do next with your WorkCover claim, having difficulties with your WorkCover Customer Advisor or confused about what your rights are? Our team can go through what they advise you do next, and review where you are at currently.

It costs nothing to have a chat.

The worst thing you can do, is do nothing...

And lose your rights!

CALL US TODAY ON 07 3910 5450



Thank you for downloading our guide.

We hope this guide has been helpful to you. If you have any questions please direct them to clientcare@trilbymisso.com.au or call us on 07 3910 5450.

TRILBY
MISSE
LAWYERS

