

Injury Schemes Seminar

Balancing Outcomes

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Injury Schemes – a lawyer's perspective

Ian Brown

Vice President and President Elect, Queensland Law Society

*This presentation has been prepared for the Actuarial Institute 2013 Injury Schemes Seminar.
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Injury schemes – a lawyer's perspective

- The role of lawyers in ensuring the maintenance of viable injuries compensation schemes
- A brief outline of the relevant histories of the motor accident and workers compensation schemes in Queensland and the role played by the legal profession in ensuring the viability of those schemes
- A discussion of the recent changes to the workers compensation scheme in Queensland – a case study in how the contribution of the legal profession to appropriate actuarial analysis can be critical to the future viability of injury compensation schemes



<p>Motor Accident Insurance Act 1994 1 September 1994</p>	<p>Provided a legislative framework around the existing common law process. Key objectives:</p> <ul style="list-style-type: none"> • Provide for licensing and supervision of CTP motor vehicle insurers • Encourage the speedy resolution of claims • Promote and encourage the rehabilitation of injured persons • Establish and keep a register of claims to help administer the statutory insurance scheme. 	<p>16 Jun 2002 – Restrictions of advertising from plaintiff lawyers</p>	<p>Personal Injuries Proceedings Act 2002 (Qld) places a restriction on lawyers advertising in Queensland</p>
<p>Motor Accident Insurance Amendment Act 1999 14 December 1999</p>	<p>Prohibited touting</p>	<p>Civil Liability and Other Legislation Amendment Act 2010 1 July 2010</p>	<p>Re-based and facilitates the future indexation of monetary amounts including the legal costs thresholds and caps on general damages</p>
<p>Motor Accident Insurance Amendment Act 2000 1 July 2000 & 1 October 2000</p>	<ul style="list-style-type: none"> • Competitive premium filing model • Simplified Notice of Accident Claim Form • Introduction of a medical certificate • Requirement for insurers to make early decision on rehabilitation • Thresholds for recovery of legal costs • A mediation process for rehabilitation disputes • Requirement to report accidents to Police • Compulsory pre-proceedings conference 		



<p>Pre-1997</p>	<ul style="list-style-type: none"> • Irrevocable election to access common law 1 Jan 1996. • Pre court process for claims introduced • Interest on general damages abolished. • Gratuitous care awards abolished in common law claims 	<p>7 June 2012</p>	<p>Inquiry into workers compensation scheme announced</p>
<p>1 Jul 1997 - WorkCover Queensland Act 1996</p>	<ul style="list-style-type: none"> • Changed definition of worker to PAYE taxpayer • Changed the definition of injury to 'the major contributing factor' • Self insurance for large employers 	<p>23 May 2013</p>	<p>Parliamentary committee hands down report. Recommends inter alia against the introduction of thresholds for access to common law</p>
<p>1 Jul 1999 - WorkCover Queensland Amendment Act 1999</p>	<ul style="list-style-type: none"> • Changed the definition of worker to working under a contract of service. • Changed definition of injury to 'a significant contributing factor'. 	<p>14 October 2013</p>	<p>Queensland government announces decision to undertake changes to workers compensation scheme including the imposition of a 5% threshold for access to common law</p>
<p>1 Jul 2001 - WorkCover Queensland Amendment Act 2001</p>	<ul style="list-style-type: none"> • Amended contributory negligence and mitigating loss provisions • Introduction of the common law only process. 	<p>15 October 2013</p>	<p>Legislation introduced into parliament</p>
<p>16 Jun 2002 – Restrictions on advertising by plaintiff lawyers</p>	<ul style="list-style-type: none"> • Personal Injuries Proceedings Act 2002 (Qld) places a restriction on lawyers advertising in Queensland • Prohibits touting for claims 	<p>18 October 2013</p>	<p>Legislation passed</p>
<p>1 Jul 2010 - Workers' Compensation & Rehabilitation & Other Legislation Amendment Act</p>	<ul style="list-style-type: none"> • Introduction of regulated common law general damages through ISV • Loss of earnings claims capped • Adverse costs order if injured worker's claim dismissed • Abolition of private right of action for breach of statutory duty 		



The recent changes to workers compensation in Queensland

- Limited consultation
- Rapid legislation
- 5% impairment threshold to access common law
- Unforeseen consequences of introducing an access threshold
- Evidence of detailed actuarial analysis?
- Increased costs
- Increased delay
- Unfairness and inequitable outcomes
- No evidence of detailed actuarial analysis of the changes and if undertaken then no broad stakeholder consultation