

# Permanent impairment and your common law options

## Information for injured workers and their families

### Your lump sum decision

You have been assessed for permanent impairment and have been offered a lump sum compensation payment to finalise your statutory claim. The information in this fact sheet will help you understand what happens next.

### Your notice of assessment

Your ongoing impairment has been assessed by a medical practitioner or the Q-COMP Medical Assessment Tribunal.

Based on this assessment, WorkCover Queensland (WorkCover) has offered you a lump sum compensation payment to finalise your statutory claim. Your offer is listed on your Notice of assessment.

### Part A—it is your choice

You can choose to either accept or reject the lump sum compensation payment and/or pursue a common law claim. Your options will be dependent on the percentage of your permanent impairment.

### Part B—what is common law?

Common law is the process where you seek damages from your employer, alleging they breached the duty of care they owed to you.

Your claim may be negotiated directly with WorkCover, or if an agreement cannot be reached, a judge may determine your entitlement.

#### Important things to know about common law

- Before your common law claim can be paid, you will need to prove your employer was negligent.
- If your actions also contributed to the accident, your entitlement will be reduced to reflect this.
- You may have to undergo further medical assessments.
- Further factual evidence will be obtained from you, your colleagues, and your place of employment.
- You will need to supply information relating to your employment history, taxation records, and medical history.
- If your claim cannot be resolved by negotiation, you may be required to give evidence in court.

### Part C—what are my options?

#### Option 1—accept lump sum payment

Accept your permanent impairment and the lump sum compensation payment, and finalise your statutory claim. If you choose to accept the lump sum offer, you will receive payment within seven days.

#### Option 2—if your permanent impairment is less than 20%

If you choose to reject the lump sum offer and seek damages via the common law process, then it is important to know that once you start the common law process, you will no longer be able to accept the lump sum offer.

If you choose to pursue a common law claim you will be responsible for your own legal fees.

#### Option 3—if your permanent impairment is 20% or more

You are entitled to accept the lump sum compensation as well as seek damages via the common law process.

WorkCover may be required to pay part of your legal fees.

### Frequently asked questions

#### Will I need representation?

Whilst it is not necessary, most people who proceed with a common law claim choose to engage a solicitor, as the process is of a complex and legal nature.

#### How long will the process take?

You will need to be prepared for what could be a lengthy process to finalise your claim. If you are not employed you may need to seek income assistance.

The average common law claim takes up to 12 months to settle, and if your claim proceeds to court, the process will take longer.

#### What happens on completion?

If a settlement is reached, in most cases, the following are taken from your settlement amount:

- money WorkCover has paid you already
- any rehabilitation expenses
- money owing to Centrelink, Medicare, and Child Support Agency
- your solicitor's fees.

You should discuss this with your solicitor so you understand the amounts that might be deducted from your settlement.