

WorkCover QUEENSLAND

we cover, **we care**



Minimising the Risk of Common Law Claims in the Accommodation and Food Services Industry

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Meet your moderator

Melissa Steadman
Industry Manager
WorkCover Queensland



After the webinar

- A recording and presentation slides will be on worksafe.qld.gov.au in the coming days (Forms & Resources > Webinar and event videos)
- If we don't answer all of your questions, we will collect them and publish answers on our website
- Please complete a short survey at the end of the webinar. Your feedback will help us improve webinars and identify potential topics.

Webinar and event videos



Workplace Health and Safety Queensland, the Workers' Compensation Regulator and WorkCover Queensland host events and webinars on a range of topics, including injury prevention, return to work strategies and workers' compensation legislation.

We share the video recordings of these sessions, along with other helpful resources for you to access in your workplace.

For more information on upcoming events and webinars, visit our [events](#) page.

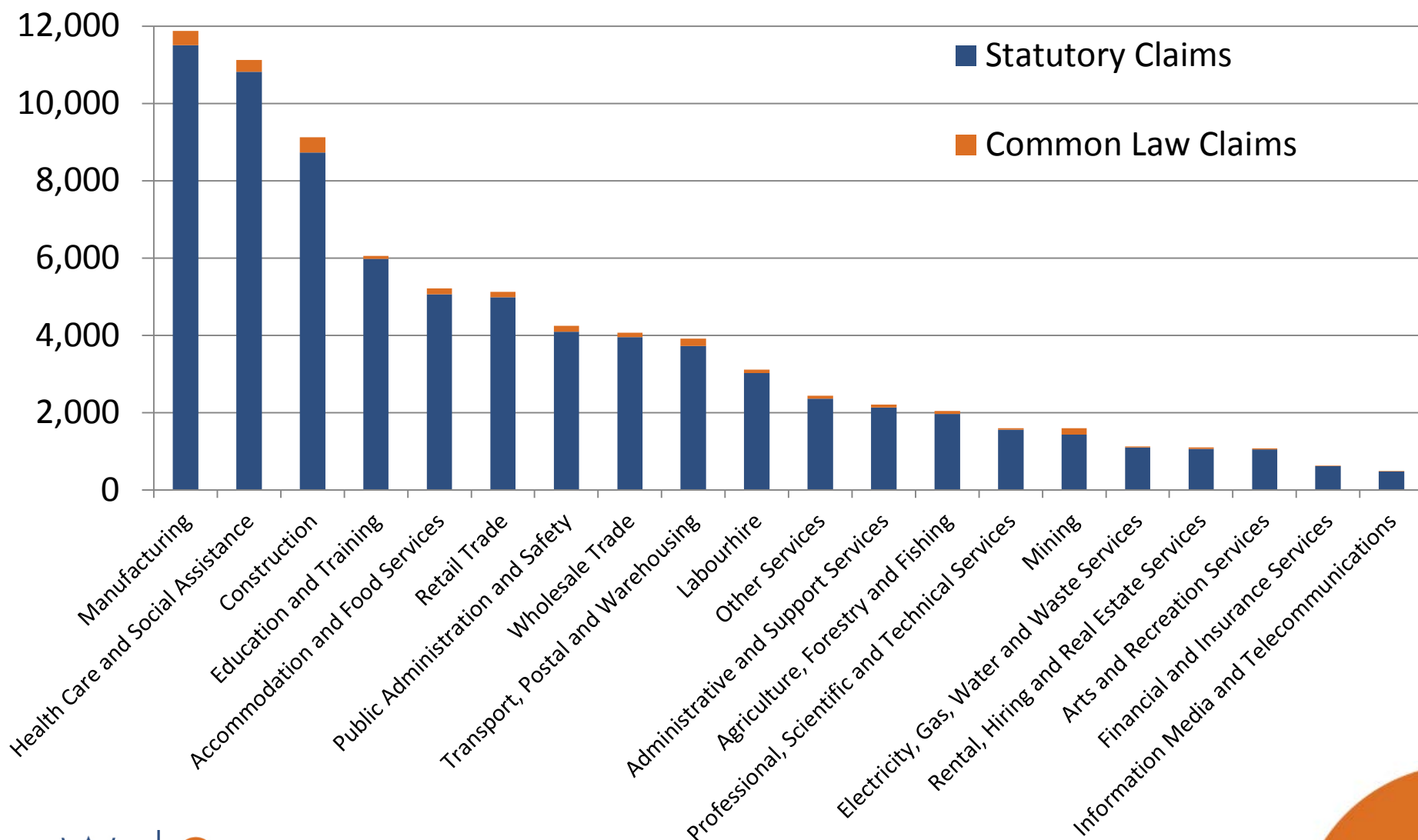
Common law

- > [Special considerations for a young and ageing workforce](#) (30 April)
- > [Safe work procedures and PPE](#) (26 March 2015)
- > [Common law claims: What is evidence](#) (26 February 2015)
- > [Do you employ workers in other states? Are they covered by your Queensland workers' compensation policy?](#) (24 February 2015)
- > [Overview of common law claim process](#) (29 January 2015)
- > [Vicarious liability and information gathering following a workplace incident](#) (3 December 2014)
- > [Understanding common law: Lifting and transfer injuries](#) (22 October 2014)
- > [Agriculture: common law overview](#) (4 March 2014)
- > [Common law claims: simplifying liability and quantum](#) (9 October 2013)

Industry forums

- > [Return to work strategies in the labour hire industry](#) (27 May 2015)
- > [Mining musculoskeletal forum: Early treatment improves results](#) (11 March 2015)
- > [Health and community care: Do you have the right insurance cover and best practices in place to minimise your premium?](#) (19 February 2015)
- > [Retail and tourism: managing the risks of armed robberies and assaults webinar](#) (26 November 2014)
- > [Manufacturing: safety risks associated with machine guarding, hot works, and processes for isolation and tag out](#) (November and December 2014)
- > [Motor and petroleum: the age of aggravation](#) (19 November 2014)
- > [Transport: The drive to 'Wellness'](#) (29 October 2014)
- > [Motor retailing](#) (22 October 2013)
- > [Accommodation](#) (27 February 2013)

Claim numbers by industry



ACCOMMODATION AND FOOD SERVICES



OVER

5,062



INJURY CLAIMS

OVER

\$28m

STATUTORY
COMPENSATION
PAYMENTS

OVER

\$18m

COMMON LAW
COSTS



AVERAGE DAYS OFF WORK

+34% INJURED WORKERS AGED
20–30 YEARS OLD

MOST COMMON INJURIES

Musculoskeletal injuries **46%**

Wounds and lacerations **26%**



WorkCover
QUEENSLAND

Meet your presenters

Tony Park

Partner

Cooper Grace Ward



Kara Thomson

Senior Associate

Cooper Grace Ward



Legislation

Injuries before
15 October
2013

- No degree of injury threshold

Injuries on or
after 15
October 2013

- Greater than 5% degree of injury threshold

Injuries on or
after 31
January 2015

- Currently a Bill before parliament

What is Common Law?

- The common law is essentially law developed by judges as distinct from laws created by Parliament.
- The established principles from previous decisions govern how current cases are treated.



Common law – Basics

A claim for damages for negligence.

Injured worker must have a 'Notice of Assessment' – irrevocable election required.

Factors to consider include primary negligence, causation, contributory negligence etc.

Legislation designed to minimise intervention by courts.

What is Negligence?

Negligence

- A failure to exercise the care that a reasonably prudent employer would exercise in like circumstances, having taken into account the potential harm that it might foreseeably cause to workers.

What is Negligence? (cont.)

Section 305B of *WCRA 2003*:

- the risk of injury must be foreseeable
- the risk of injury must be significant
- a reasonable employer, having foreseen this significant risk, would have taken action to prevent or minimise the risk



There is a way to minimise risks – look to:

*Work Health
and Safety Act
2011*

Codes of
Practice

See more:
[worksafe.qld.gov.au](https://www.worksafe.qld.gov.au)

Examples – Recent industry claims

Manual Handling

- Lifting common office item, 14kg, no training

Whilst the weight might not seem excessive, consider how the item is used and stored

Training and Proof of Training

- ✓ Documented training
- ✓ Take into account your workforce demographic
- ✓ Ensure understanding of the training delivered
- ✓ Types of training:
 - Documented
 - Presentation based
 - On the job
 - Online assessments



Examples – Recent industry claims

Slips, trips and falls

- Kitchen worker slipped on oil dropped by cook

Where there is no system of cleaning spills, negligence is likely to be found – training is crucial

Examples – Recent industry claims

Slips, trips and falls

- Worker falls on grease build up – mats worn and removed

Workers' complaints essentially ignored

Risk mitigation steps, not properly considered and ineffective

Establish a safety culture

- ✔ Workplace safety has to be a core value of your organisation. Requires strong leadership and buy-in.
- ✔ Foster a culture where it is okay to report safety concerns, and there is action taken to address safety issues – revision of systems, re-training, disciplinary action, where necessary.
- ✔ Work practices must be consistent with documented systems.

Examples – Recent industry claims

Repetitive Lifting

- Kitchen worker deconstructing pallet deliveries

Consider the specific job requirements and tailor training accordingly

Examples – Recent industry claims

Repetitive strain

- Housekeeper working under time pressure

Create a culture where workers feel supported in raising safety concerns and understand the reporting processes

Examples – Recent industry claims

Lacerations

- Young apprentice using knife to cut trays sliced through tendons in hand

Take into account inadvertence

Do not assume all employees will display 'common sense'

Examples – Recent industry claims

Psychiatric Injuries

- Bullying and harassment
- Employer on notice of psychological harm



Crucial to act, and act quickly, once an employer is aware of work related psychological symptoms

Examples – Recent industry claims

Psychiatric Injuries

- Armed robbery
- Requests for additional security prior to incident



Where there is a history of crime, there may be additional measures required to reduce risks

Examples – Recent industry claims

Lacerations

- WorkCover defends glass catching case

Sometimes accidents happen, it doesn't necessarily mean an employer has been negligent

Minimising the risk of common law claims



Document risk assessment, systems and procedures



Implement training and follow up to ensure compliance



Tailor your training to meet your employee demographic – cater for educational / language barriers



Create a safety aware workforce



Act decisively on safety concerns or complaints



Where workers repeatedly fail to comply, consider disciplinary action



Support workers to return to work

Minimising the risk of common law claims



Review task requirements to ensure that systems and procedures are up to date



Consider whether tools or equipment required



Act promptly where there are signs of psychological injury



If there is a history of criminal activity (e.g. robbery), consider all available security measures



Consider the timing of breaks for workers performing repetitive duties (e.g. housekeeping)



Take into account inadvertence, especially from less experienced workers (e.g. limiting use of mobiles)



Never lose sight of an employers' strict duty of care, common sense is not 'one size fits all'

Defending common law claims

How you can help



Document the injury and cause in an incident report



Identify witnesses and capture their recollection in writing



If the incident is captured on CCTV, retain the footage



Identify items being lifted, weights, equipment etc and take a photograph (useful to attach to incident report)



If the incident occurred due to external factors (eg spill), identify any third party involvement (eg cleaners, other contractors)



Keep diary notes of rehabilitation and return to work



Record if the worker has had similar incidents or injuries in the past (whether or not the subject of claims)

What to do if an injury occurs

Immediately after an injury

- Talk to your employee. Don't blame, support them
- Get them medical assistance – early intervention is key

During recovery

- Offer return to work options: light or alternative duties
- Keep talking to the worker about their progress

Plan for their return

- Develop a list of duties based on their skill set
- Get input from the worker and doctor

The actual return to work

- Supervisors and co-workers need to understand the injured person's limitations – supportive culture

Review and improve

- Injured employee's feedback can be useful to improve your systems or processes

Questions?



More information

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