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# **Caring for the well-being of your Staff**

***Pastoral care in the minefield of WorkCover Statutory  
and Common Law Claims***

**Andrew Lind & Eduardo Cruz**

**ACS Leaders' Retreat – 16 July 2015, Gold Coast QLD**

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***“The rule that you are to love your neighbour becomes law (sic) you must not injure your neighbour.”***

*Donoghue v Stevenson*

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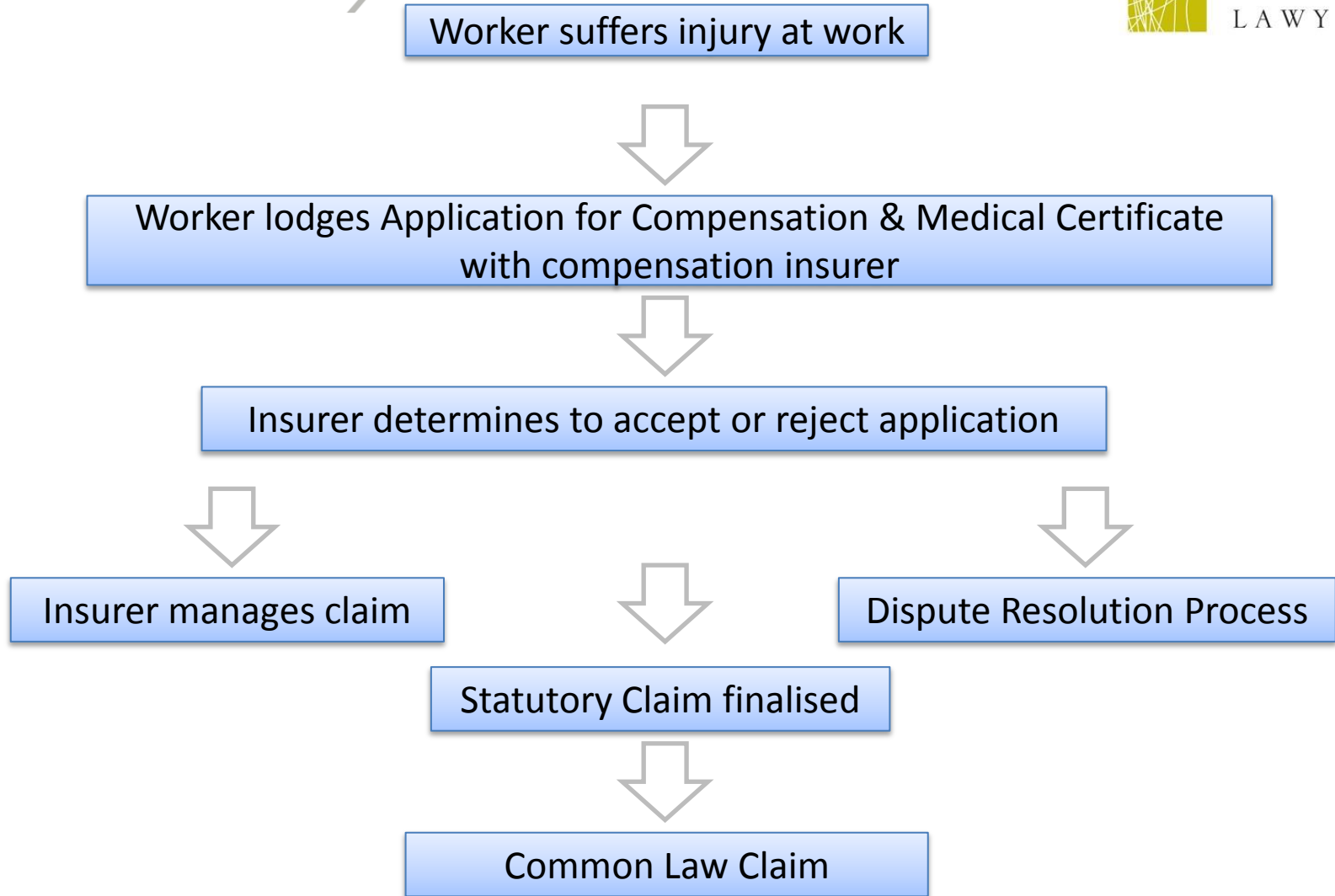


Expressing deep regret and empathy for an injury suffered by your neighbour does not mean an admission of liability.

Sections 68-72 of the Civil Liability Act 2003 (Qld) provides protection in relation to an expression of regret in proceedings for personal injury.

Expressing general regret and empathy demonstrates care and frames a possible return to work.

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## Statutory Claims

- Approximately 100,000 claims are lodged in Queensland each year
- 80% are successful
- 4% are rejected
- 16 % do not progress
- Less than 0.4% are appealed
- Less than 5% of claims progress to Common Law
- 4.6 % are Psych claims of which 65% get rejected

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# COMMUNICATION

Your ability to utilise appropriate and caring pastoral care begins here



## **Statutory Claims – Steps to take**

1. As soon as possible after the event begin to gather relevant information
2. The version of events from the injured worker – as detailed as possible: with regret, care and empathy
  - a) Did anyone instruct the worker to do the task?
  - b) Was anyone else involved in the incident?
  - c) Weights and sizes of any equipment involved?
  - d) Site conditions (weather; surface – slippery, wet, dry; noise level; fumes)
  - e) Who was the supervisor?
3. Names and contact details of witness and/or witnesses
  - a) Version of events from the witness and/or witnesses
4. If possible - Photos of equipment, area of incident, evidence of existing place of work as it was at date of injury
5. Training and Personnel records. In the event of primary psych claims – diary, meeting notes, emails, rosters, file notes, witness statements.

# Statutory Claims

## 1. Prevent injuries in the first place

- Having proper WPHS procedure
- Having proper training schedules
- Having proper complaint handling procedures
- **Communicate with care and empathy**

2. Work with the injured worker – a common reason people bring a common law claim is because they feel the employer has not helped them as much as they could. That the employer has not cared.

3. Look for ways to help the worker return to work = **care**

4. Have clear procedures dealing with accidents/injuries = **care**

5. Work closely with the injured worker to rehabilitate them and keep them at work = **care**



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## Statutory Claims

### Communication with care and empathy

- Return to Work Program
- 96.3% success rate of workers returning to work
- 6169 Statutory Claims brought in Education and Training Industry in 2013/2014



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## Reasonable Management Action

Interpreted very broadly.

In *Bowers v Work Cover Queensland*, *Prizeman v Q-COMP* and *Delaney v Q-COMP Review Unit* the Industrial Court determined that ‘management action need not be perfect or above criticism and **“reasonable”** management action permits some failings deficiencies and flaws’.

In *Prizeman* it was determined that the onus rests with the worker to establish that management action has been unreasonable and in the absence of evidence to support contentions the management action must be deemed reasonable.

That is, there is usually a presumption of “reasonableness”

***Keegan v Sussan Corporation (Aust.) Pty Ltd [2014] QSC 64***

- Exposed to bullying and harassment
- Fourth day from maternity leave she complained about the manager
- She was told to work it out with her manager
- Employer had policies in place but failed to follow them
- Had the policies been followed the legal proceeding may have been avoided
- Judgment for the plaintiff of \$237,770.00

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***Fredrick Hempseed AND Q-COMP (WC/2010/5)***

- Several deaths at a mine over a period of time.
- Appellant volunteered to consult with the grieving families.
- Appellant de-compensated following the consultation.
- He alleged lack of training, procedures and assistance.
- The actions of the employer were deemed to be **unreasonable**.
- Appeal was allowed.

## Common Law Claims

- Communication break down is one of the primary reasons an injured worker brings a Common Law Claim
- \$566 Million payout in 2013/2014 on Common Law Claims
- \$129,940 average payout
- 4125 Common Law Claims in 2013/2014
- Threshold of 5% PI in order to proceed to seek Common Law damages
- Even if insurance responds the loss and damage will be significant

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## **Common Law Claims**

- General Damages
- Past and Future Economic Loss
- Past and Future Medical Expenses
- Care and Assistance
- Rehabilitation
- Miscellaneous

## 5 Steps To Remember

1. Plan
  - Have workplace and safety policies in place and enforce them
2. Be aware
  - Communicate with your management team and your staff
3. Early intervention
  - Deal with a complaint or concern as quickly as possible
4. Communicate
  - With empathy and care
5. Think of alternatives
  - What else might improve a difficult situation



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## Contact



**Name:** Andrew Lind

**Position:** Director

**Email:** [andrew.lind@corneyandlind.com.au](mailto:andrew.lind@corneyandlind.com.au)



**Name:** Eduardo Cruz

**Position:** Associate

**Email:** [eduardo.cruz@corneyandlind.com.au](mailto:eduardo.cruz@corneyandlind.com.au)

07 32520011

[www.corneyandlind.com.au](http://www.corneyandlind.com.au)