Finance and Administration Committee

Inquiry into the operation of Queensland's workers' compensation scheme

INFORMATION PAPER

prepared by Department of Justice and Attorney-General
Q-COMP, the Workers' Compensation Regulatory Authority
WorkCover Queensland

Table of contents

Tables and charts

Executive Summary

1. The *Workers' Compensation and Rehabilitation Act 2003* (the Act) establishes Queensland's system of workers' compensation.

2. The Act requires the Minister with responsibility for workers' compensation to ensure a review of the operation of the workers' compensation scheme is completed at least once in every five year period. The first review is to be completed by no later than 30 June 2013.

3. On 7 June 2012, the Legislative Assembly referred responsibility for the inaugural review to the Parliament's Finance and Administration Committee.

4. The Queensland workers' compensation scheme (the scheme) provides benefits for workers who sustain injury in their employment, for dependants if a worker's injury results in the worker's death, and encourages improved health and safety performance by employers.

5. Because it is in the State's interests that industry remains locally, nationally and internationally competitive, it is intended that the scheme should not impose too heavy a burden on employers and the community.

6. The scheme is administered in three parts. The Department of Justice and Attorney-General implements the government's policy and legislative agenda and manages the wider nexus between workers' compensation and work health and safety. Q-COMP regulates and monitors the insurers (WorkCover Queensland and self-insurers). Insurers are responsible for underwriting, claims management and rehabilitation, and for WorkCover only, funds management and premium setting.

7. Queensland is the only jurisdiction with a centrally funded 'short tail' scheme. The maximum period of time a worker can receive benefits is five years. However, all injured workers on statutory benefits at the two year point are reviewed to assess their degree of Work Related Impairment. If their impairment is greater than 15% then they continue at the same income support until the injury is stable and stationary. If the impairment is 15% or less then the benefit reduces to the single pension rate, also until the injury is stable and stationary. Of statutory claims 16% of workers continue on benefits after 3 months, 7% after six months, 2% after 12 months and 0.6% after two years. This short tail is offset by the ability of injured workers to seek damages at common law.

8. Due to the financial strength of WorkCover, the Queensland scheme's primary insurer, the solvency risk to the scheme is minimised. WorkCover's position is currently strong with projected equity of $502 million at 30 June 2012 and an estimated funding ratio of 117 per cent. The net tangible asset position and profit history of the self-insurers is sound.

9. WorkCover insures more than 150,000 employers covering approximately 90 per cent of Queensland workers. There are currently 25 licences for self-insurance covering 258 employers and approximately 10 per cent of Queensland workers. Over the last 10 years WorkCover has consistently delivered either the lowest or second lowest average premium rate for employers when compared with all other State schemes.

10. The scheme provides injured workers with statutory benefits that enable them to receive medical treatment, weekly payments of compensation (for lost wages) and rehabilitation during their recovery and return to work.

11. The scheme also provides for unlimited access to common law damages for workers who can prove negligence against an employer and who have a work injury as defined by the Act.

12. Of the total cost for statutory and common law claims in 2010-11, common law claims made up 46.0 per cent ($578.2 million) and statutory claims made up 54.0 per cent ($677.8 million).

13. The statutory benefits claim rate has gradually declined from 49.7 claims per 1,000 workers for the 2007-08 year to 46.5 claims per 1,000 workers in 2009-10 and remained stable for the 2010-11 year.

14. In 2010-11, of the approximately 92,000 statutory claims finalised, 56% were for lost time and the remaining 44% were for medical expenses only. Of all lost time claims 98% were finalised within one year and only 0.6% lost time claims (310 claims) were active after two years.

15. The scheme return to work rate has improved from 95.3% in 2010-11 to 98.5% in 2011-12.

16. During 2009-10 there were 4,991 common law claims with an average damages settlement of $134,389 (inflation adjusted to 30 June 2011). In 2011-12 there is forecast to be 4,400 claims (scheme wide) for common law with an average damages settlement of $117,933.

17. This information paper includes an overview of identified issues relative to the scheme's performance and function. The identified issues include:
    - definition of worker – establishes who is eligible to make a workers' compensation claim and how an employer's premium is calculated;
    - premium incentives – identifies principles to be applied when designing premium calculations and incentives trialled in other jurisdictions;
    - workers' entitlement to recess and journey claims – why this entitlement is provided, a comparison to other jurisdictions and how it impacts on employers' premiums;
    - protection of injured workers' personal information – identifies under what circumstances a worker's personal claims information can be made available and a comparison to other jurisdictions;
    - solar/passive smoking injuries – identified as an emerging issue that may impact future scheme costs;
    - firefighters presumptive compensation laws – identifies recent amendments in some jurisdictions and research being undertaken into possible links between the work of firefighters and latent diseases;
    - self-insurance criteria – a comparison to other jurisdictions and potential risks; and
    - *Foster & Anor v Cameron* [2011] QCA 48 (*Cameron*) – summary of Court decision and potential impact on scheme.

Introduction

This information paper does not represent government policy but is intended to inform debate and input on a matter of public policy.

Workers' compensation schemes in Australia and internationally share a common goal: to provide injured workers with fair and reasonable benefits at the lowest possible premium to employers, balanced in a way that maintains scheme viability. In Queensland, this responsibility rests principally with WorkCover Queensland (WorkCover), the government owned provider of workers' compensation insurance.

The Queensland workers' compensation scheme has undergone a process of almost continuous review and reform since the early 1990s (see Appendix 1). Major rewrites of the legislation in 1996 and 2003, for example, resulted in significant changes such as the establishment of WorkCover Queensland and Q-COMP as autonomous statutory bodies.

From inception in 1997 to 1 July 2003 WorkCover Queensland successfully operated as an integrated workers' compensation scheme, with combined regulatory and insurance functions. Following a review of Queensland's workers' compensation scheme as part of the National Competition Policy reforms aimed at developing a more open and integrated Australian market, Q-COMP was formally separated from WorkCover on 1 July 2003 and established as a statutory body to regulate Queensland's workers' compensation scheme.

This process of monitoring and evaluation, in consultation with stakeholders, is an established feature of the workers' compensation scheme. However, as the report of the *Structural Review of Institutional and Working Arrangements in Queensland's Workers' Compensation Scheme* (the Structural Review) noted, previous reviews:

> *...have occurred in response to external events, such as financial pressures or the requirements of national competition policy. There would be value in a more systematic review process that was more under the control of government as to timing and scope.* (p 25)

In 2011, the *Workers' Compensation and Rehabilitation Act 2003* (the Act) was amended in line with this recommendation of the Structural Review. The amendment requires the Minister with responsibility for workers' compensation to ensure a review of the operation of the workers' compensation scheme is completed at least once in every five year period.

The Minister must prepare a report about the outcome of the review and, as soon as practicable after the review is completed, table the report in the Legislative Assembly, with the first review to be completed by no later than 30 June 2013. There is no prescribed method for conducting the review.

On 7 June 2012, the Legislative Assembly referred responsibility for the inaugural review to the Parliament's Finance and Administration Committee. The referral motion reads:

1. *That the Finance and Administration Committee inquire into and report on the operation of Queensland's workers' compensation scheme, in particular:*

   (i) the performance of the scheme in meeting its objectives under section 5 of the Act;

   (ii) how the Queensland workers' compensation scheme compares to the scheme arrangements in other Australian jurisdictions;

(iii) *WorkCover's current and future financial position and its impact on the Queensland economy, the State's competitiveness and employment growth;*

(iv) *whether the reforms implemented in 2010 have addressed the growth in common law claims and claims cost that was evidenced in the scheme from 2007-08; and*

(v) *whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment.*

2. *In conducting the inquiry, the committee should also consider and report on implementation of the recommendations of the Structural Review of Institutional and Working Arrangements in Queensland's Workers' Compensation Scheme.*

3. *Further, that the committee take public submissions and consult with key industry groups, professionals, and relevant experts.*

4. *The committee is to report to the Legislative Assembly by 28 February 2013.*

Scheme overview

The *Workers' Compensation and Rehabilitation Act 2003* (the Act) and *Workers' Compensation and Rehabilitation Regulation 2003* (the Regulation) establishes Queensland's system of workers' compensation. Under the Act, an employer must insure or self-insure against work related injury sustained by a worker of the employer where work is a significant contributing factor to the injury.

Queensland's workers' compensation scheme (encompassing both premium-paying employers and 25 self-insurers) covers approximately 150,000 employers and an estimated 2.3 million workers (as at 30 June 2011).

Three agencies administer the workers' compensation scheme:

- the Department of Justice and Attorney-General – implements the government's policy and legislative agenda and manages the wider nexus between workers' compensation and work health and safety;
- Q-COMP – regulates insurers, provides legal and medical dispute resolution, provides rehabilitation advisory services and promotes education about the scheme; and
- the Insurers (i.e. WorkCover Queensland and self-insurers) – WorkCover Queensland is the sole commercial provider of workers' compensation insurance and claims services in Queensland and is the insurer for 90 per cent of the claims made in Queensland. There are 25 self-insurers that administer the remaining 10 per cent of claims lodged.

Most decisions of insurers can be independently reviewed by Q-COMP, with further appeals available to the Queensland Industrial Relations Commission (for claims matters) or Industrial Magistrate (for premium matters), with a further and final appeal available to the Industrial Court of Queensland.

A WorkCover insurance policy covers an employer for all compensation, medical expenses and damages claimed by injured workers for injuries that arise out of – or in the course of – employment, where employment is a significant contributing factor to the injury. Psychiatric and psychological injury that results from reasonable management action taken in a reasonable way is not covered by the scheme. Like all Australian schemes, Queensland's statutory workers' compensation scheme is a no fault scheme. An injured worker who meets the Act criteria is entitled to statutory compensation (as opposed to common law damages) regardless of whether it is the worker's or the employer's fault that the injury occurred. Issues of fault and negligence (including contributory negligence by a worker) may be dealt with in a common law action for damages.

Queensland is a centrally funded scheme. In centrally funded schemes, a single public insurer performs most, if not all, of a workers' compensation insurer's functions. Central insurers are responsible for underwriting their scheme. This is in contrast to jurisdictions like Western Australia, Tasmania, Australian Capital Territory and the Northern Territory, which are privately underwritten schemes. In these schemes most, if not all, insurer functions are provided by the private sector, through approved insurance companies. New South Wales, Victoria and South Australia have hybrid schemes, employing both types of funding arrangements. In a hybrid scheme, the public central insurer is responsible for underwriting, funds management and premium setting. Other functions, such as claims management and rehabilitation, are outsourced to private sector providers, including insurance companies for claims management and companies with specialised expertise in injury management for rehabilitation. Of the central and hybrid schemes, the Queensland scheme has the highest proportion of total expenditure directed to claimants and the lowest proportion expended on insurance operations as shown in table 1.

Table 1 – Comparisons of scheme expenditure 2009-10

	Central and Hybrid Schemes Percentage of total expenditure (%)				
Scheme Costs	**Qld**	**Vic**	**NSW**	**SA**	**Comcare**
Direct to claimant	71.6	51.1	51.2	58.1	55.4
Services to claimant	16.4	20.8	27.3	19.7	21.5
Insurance operations	8.2	21.5	18.6	13.0	15.9
Dispute resolution	0.8	1.3	1.4	1.3	1.4
Regulation	0.7	3.2	1.1	2.0	0.3
Other administration	2.4	2.2	0.4	5.8	5.5
Total	100.0	100.0	100.0	100.0	100.0

Source: Comparative Performance Monitoring Report 13th Edition

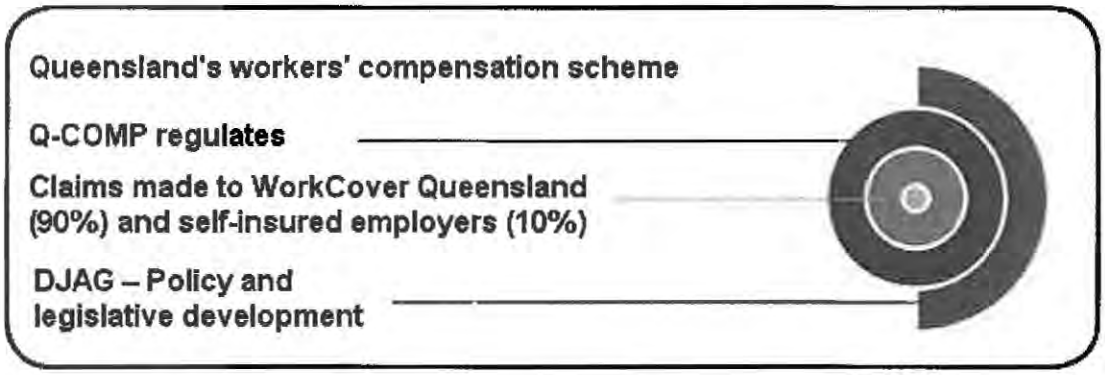
Scheme funding arrangements also influence premium setting. In centrally funded schemes like Queensland's, premium rates are determined by a central authority. In Queensland, the premium is determined by WorkCover Queensland based on actuarial forecasts of claim costs across all industry sectors. In privately underwritten schemes like those operating in Western Australia, Tasmania, Australian Capital Territory and the Northern Territory, independent insurers charge premiums on a commercial underwriting basis.

Queensland has a 'short tail' workers' compensation scheme in that the entitlement of a worker to weekly benefits stops when the first of the following happens:

- the incapacity because of the work related injury stops;
- when the worker's injury is considered stable and stationary and a lump sum payment has been accepted which is based on their permanent impairment.;
- the worker has received weekly payments for the incapacity for five years; or
- the weekly benefits received reach the maximum amount ($287,605 as at 1 July 2012).

This short tail is offset by the ability of injured workers to seek damages at common law. Most Australian jurisdictions operate long tail schemes that pay benefits for the duration of a worker's incapacity, with heavily restricted or no access to common law remedies (see Appendix 2).

Scheme administration arrangements



The Act provides the framework for the operation of the workers' compensation scheme. In addition, a cross agency strategy addresses administrative arrangements not set out in legislation. The roles and responsibilities of the Department of Justice and Attorney-General, Workers' Compensation Regulatory Authority (Q-COMP) and WorkCover Queensland are set out briefly below.

Department of Justice and Attorney-General

Policy and legislative development

The Department ensures the legislative and policy framework for workers' compensation, including responses to emerging policy issues, are in accordance with government priorities and commitments. This enables WorkCover and Q-COMP to conduct their operations at arm's length from the Executive arm of government.

This role involves monitoring workers' compensation trends and statistics, shifts in the labour market and economic climate, developments in common law and interpretation of legislation by the courts, and experience from other jurisdictions.

The Department advises the Attorney-General on issues relevant to the Attorney's responsibilities and powers under the Act for the monitoring and assessment of Q-COMP and WorkCover.

Self-insurer health and safety performance

The work health and safety performance of self-insurers is audited by the Department. The Department is also responsible for determining the work health and safety performance requirements of current and prospective self-insurers.

Q-COMP

Regulation of the scheme

The Act also establishes the Workers' Compensation Regulatory Authority (trading as Q-COMP), whose primary function is to regulate the workers' compensation scheme. In enforcing the Act as regulator, Q-COMP's functions include:

- monitoring insurers' performance and compliance with the Act;
- deciding applications for self-insurance licences;
- undertaking reviews of insurer decisions;
- defending appeals of its review decisions;
- supporting and overseeing the administration of medical assessment tribunals;
- undertaking workplace rehabilitation accreditation and compliance activities;
- collation and analysis of scheme-wide statistics;
- to provide rehabilitation advisory services
- promoting education about the workers' compensation scheme
- establishes fees schedules (tables of costs) for medical and allied health services
- funding itself through collecting fees from insurers; and
- administering grants to organisations involved in the prevention, recognition, treatment, alleviation of injury sustained by workers, including making employers and workers aware of their rights and the procedures they need to follow under the Act.

Q-COMP is funded through a levy from self-insured employers and a contribution from WorkCover Queensland. Table 2 details the history of the self-insurer levy rate and self-insurers' share of the annual contribution to Q-COMP.

Table 2 – History of self-insurer levy rate and self-insurer share

Year	Rate	Share	Year	Rate	Share	Year	Rate	Share	Year	Rate	Share
12-13	2.28%	11.00%	10-11	2.30%	10.90%	08-09	2.30%	12.60%	06-07	2.37%	12.90%
11-12	2.30%	11.00%	09-10	2.40%	12.00%	07-08	2.37%	12.90%	05-06	2.48%	12.90%

Rehabilitation and return to work advisory services and programs

Q-COMP provides support for employers and insurers in achieving early and active rehabilitation and return to work of injured workers. It also operates *Return to work assist*, a free program helping injured workers whose compensation claims are finalised and who do not have a job to return to. *Return to work assist* helps injured workers access training and/or job placement services to achieve realistic career goals.

WorkCover Queensland

Provision of insurance

The Act establishes WorkCover Queensland as the provider of accident insurance to Queensland employers (other than self-insurers).

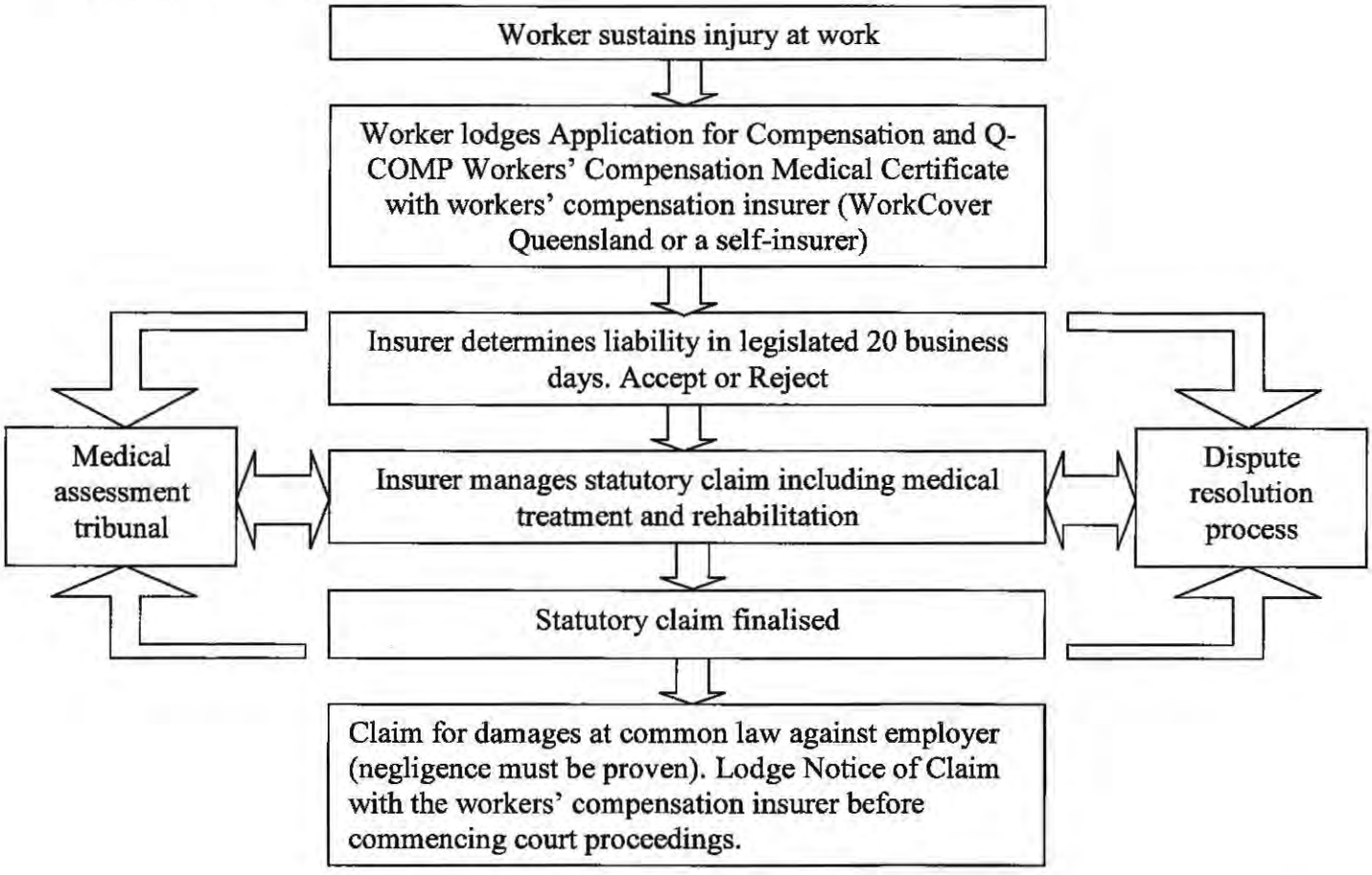
WorkCover insures employers against the cost of their workers' statutory and possible common law claims, ensuring a worker who is injured at work receives financial support. WorkCover insures more than 156,000 employers. It also managed 92,659 (103,982 scheme total) statutory and 3,863 (4,510 scheme total) common law claims in 2010-11.

WorkCover is a government owned statutory body that operates as a commercial enterprise. It is fully funded by the premiums paid by employers. Its charter is to maintain a balance between benefits for injured workers and affordable premiums for employers.

Claims process

This chart shows how a workers' compensation claim progresses through the statutory claims process and on to common law.

Chart 1 – Claims process



Financial performance of insurers

It is intended that the workers' compensation scheme should maintain a balance between providing fair and appropriate benefits for injured workers and ensuring reasonable cost levels for employers[1]. This section is concerned with the financial performance of both WorkCover and self-insurers.

WorkCover

WorkCover's operating result after tax for the period ending 30 June 2012 is projected to be a surplus of $160 million. This positive result is primarily due to a large reduction in the projected movement in the outstanding claims provision for the year, but offset by lower than expected investment returns. It should ne noted the 30 June 2012 results are still being finalised and subject to external audit, a final valuation of the outstanding claims provision from the actuary and final investment figures from QIC.

Solvency

WorkCover's projected equity position at 30 June 2012 is $502 million with a projected funding ratio of 117 per cent, meaning WorkCover remains fully funded in accordance with the requirements of the Act[2].

Table 3 – WorkCover Queensland financial position (Projection as at 30 June 2012)

Item	2011-12 Projection ($ million)
Premium	1,435
Claims	
- Net Claims Paid	(1,154)
- Movement in Provision	50
Underwriting	(183)
Investments & Other Income	82
Operating Result Before Tax	230
Tax	(70)
Operating Result After Tax	160

Equity	502
Funding Ratio	117%
Funding Ratio (Excl. DTA)	101%

WorkCover continues to recognise its deferred tax asset (DTA) on the basis that it is considered probable that WorkCover will, in the future, generate sufficient operating profits to offset the temporary and permanent losses. The operating profit after tax for 2011-12 is the first stage of reducing the DTA.

Premium

The Commission of Audit, having regard to this position, noted in its Interim Report that:

[1] Section 5(4)(a) of the Act
[2] Section 453 of the Act

[WorkCover's] capital adequacy has been under pressure due to increased claims and volatile investment performance. In part, this has been remedied by increasing average premium rates from $1.15/$100 wages (2009-10) to $1.45/$100 wages by 2012-13. However, [WorkCover] continues to operate at less than the breakeven average premium of $1.49. By comparison to other states, Queensland had one of the lower contribution rates per $100 of all states (p 175)

The State may be required to commit additional funding and/or request [WorkCover] to increase contribution rates to restore its target level of solvency, especially if the operating position and investment returns deteriorate (p 176)

Investments

WorkCover holds an investment portfolio of more than $2 billion managed by Queensland Investment Corporation (QIC). WorkCover's gross return on investments has a significant bearing on its funding position.

In 2000, the WorkCover Board established an investment fluctuation reserve to minimise investment market volatility. The instability of markets over the past ten years, which resulted in two years of negative investment returns (2007-08 and 2008-09), was able to be absorbed by the investment fluctuation reserve. Investments have since recovered, with the gross return of 3 per cent anticipated as at 30 June 2012.

Outstanding claims

Outstanding claims liability is an actuarial measure necessary for the sound financial management of insurance schemes. WorkCover holds amounts in reserve to offset its outstanding liability for accrued, continuing and future claims for injuries sustained by workers.

The mid-year outstanding claims provision review was updated by WorkCover's actuary as at the end of March, reducing the anticipated increase in this provision from an original budget of $328 million, to $50 million. The main reasons for this significant reduction were:

- a reduction in the expected Common Law average settlement size;
- a reduction in the ultimate number of projected Common Law claims.

Self-insurers

The risk of self-insured employers not being able to meet their workers' compensation liabilities is managed by the Act requirement for them to lodge bank guarantees for at least 150 per cent of their estimated claims liability (ECL), to have a specified level of reinsurance, and through regular monitoring of their performance and financial results by Q-COMP.

Table 4 – Current self-insurer prudential status

Self-insured Employer (de-identified)	Net Tangible Assets (NTA) ($)	NTA multiple of ECL*	Profit history of last 3 years	Bank guarantee multiple of ECL	Current reinsurance
1	30,990,000,000	49,927	PPP	8.1	Y
2	32,029,000,000	13,682	PPP	2.1	Y
3	41,796,822,000	1,338	---	1.5	Y
4	19,319,832,000	2,476	---	1.5	Y
5	9,273,079,000	1,263	---	1.5	Y
6	1,727,561,460	2,777	---	8	Y
7	3,356,024,000	1,191	---	1.8	Y
8	1,235,400,000	235	LLP	3.7	Y
9	475,139,000	182	PPP	1.9	Y
10	1,915,000,000	687	PPP	1.8	Y

Self-insured Employer (de-identified)	Net Tangible Assets (NTA) ($)	NTA multiple of ECL*	Profit history of last 3 years	Bank guarantee multiple of ECL	Current reinsurance
11	669,800,000	132	PPP	1.5	Y
12	230,470,000	38	PPP	1.5	Y
13	748,514,000	43	PPP	1.5	Y
14	33,618,000,000	948	PPP	1.5	Y
15	56,851,000,000	1,258	PPP	1.5	Y
16	2,991,839,000	4,000	PPP	6.7	Y
17	2,028,300,000	724	PPP	1.8	Y
18	821,331,000	189	PPP	1.5	Y
19	2,609,200,000	48	PPP	1.5	Y
20	4,749,000,000	88	PPP	1.5	Y
21	-82,550,000	-50	PPP	3	Y
22	6,966,100,000	256	PLP	1.5	Y
23	5,558,000,000	469	PPP	1.5	Y
24	954,700,000	71	PPP	1.5	Y
25	2,472,000,000	104	PP	1.5	Y

* Estimated claims liability
P – Profit
L – Loss
--- - Not for Profit organisation

Solvency

The net tangible asset position of all self-insurers, with one exception, is very sound. There is only one self-insurer with a negative net tangible asset position. However, Q-COMP holds a bank guarantee for three times its estimated claims liability.

Due to the financial strength of self-insurers, reinsurance provisions and regularly reassessed bank guarantees, the solvency risk to the scheme posed by self-insured employers in this scheme is very low.

WorkCover premiums

Under the Act, all Queensland employers who engage workers must have a workers' compensation insurance policy with WorkCover unless they are a licensed self-insurer. WorkCover insures more than 150,000 employers. An employer's insurance policy covers any costs that may be incurred from their workers' injuries, including the costs of any common law claims made against the employer.

Employers insured with WorkCover pay a premium to meet the cost of this insurance. This premium is used to administer the insurance business, make payments to injured workers for income replacement and medical treatment, rehabilitation and return to work support, injury prevention activities and scheme administration.

Maintaining low premium rates contributes to Queensland's low tax status for businesses, which keeps pressure off employers, and can attract new businesses and investment to the State

Premium rates

Over the last 10 years WorkCover either has consistently delivered the lowest or second lowest average premium rate for employers when compared with all other State schemes (see Table 5 below). WorkCover's average premium rate has been increasing since 2009-10, from $1.15 per $100 of wages to an average premium rate of $1.45 for 2012-13. The 2012-13 average premium rate of $1.45 is the second lowest in comparison with other State schemes.

Table 5 – Average Premium rates – Australia

Jurisdiction	2012-13	2011-12	2010-11	2009-10	2008-09	2007-08	2006-07	2005-06	2004-05	2003-04	2002-03
Queensland	1.45	1.42	1.30	1.15	1.15	1.15	1.20	1.43	1.55	1.55	1.55
New South Wales	1.68	1.68	1.66	1.69	1.72	1.86	2.17	2.57	2.65	2.57	2.80
Victoria	1.29	1.34	1.34	1.39	1.39	1.46	1.62	1.80	1.98	2.22	2.22
Western Australia	1.69	1.55	1.50	1.74	1.58	1.85	2.12	2.32	2.25	2.34	2.47
South Australia	2.75	2.75	2.75	3.00	3.00	3.00	3.00	3.00	3.00	3.00	2.46

* Average premium rates for Tasmania, Northern Territory and ACT are not available as premiums are set by private sector agents.

Premium calculation method

The actual premium paid by an employer in Queensland varies according to the size, claims experience and industry of the employer. Premium collected in a year is to pay for all injuries that occur in that year, which will be paid out in that year and over future years. Essentially premium is calculated using the Experience Based Rating (EBR) system which multiplies an employer's *wages* by their *premium rate*. It is designed to reward employers with good injury prevention and management. A premium rate is determined by an employer's:

- size: the smaller the employer the more their premium is based on their industry rate; the larger the employer the more their premium is based on their own experience;
- industry's claims experience: the claims costs of the industry the employer is in; and
- claims experience: includes the statutory claims costs arising from injuries incurred in the past three financial years, and common law claim costs arising from injuries that occurred in the two financial years prior to that (providing for the three year lag period in which a common law claim may be initiated) up to a maximum of $175,000 for each claim e.g. an employer's 2012-13 premium will be affected by statutory claims arising in 2009-10, 2010-11 and 2011-12 and

common law claims arising from injuries that occurred in the 2007-08 and 2008-09 financial years.

EBR systems are the predominant incentive used in other jurisdictions, although in several jurisdictions it does not apply to small business. For example, in Victoria, an employer's claims experience is only taken into consideration if their wages are over $200,000, and in New South Wales and South Australia where wages are over $300,000.

Injury Prevention and Management (IPaM) program

Employers with poor claims experience benefit from a cap on their premium rate of double the industry rate. However, legislative amendments that commenced on 1 July 2010 gave WorkCover the ability to impose an additional premium on an employer's policy of insurance if the employer's premium rate has repeatedly exceeded the relevant industry rate due to sustained poor claims experience. The additional premium may take the form of a higher premium rate.

To assist employers that may be affected by this change, WorkCover and Workplace Health and Safety Queensland (WHSQ) commenced the Injury Prevention and Management (IPaM) program in July 2010.

The IPaM program is designed to assist capped employers to develop better work health, safety and injury management systems. Reducing the number and cost of claims may help to reduce a business' premium rate. IPaM advisors located across the state work directly with employers with the poorest performing businesses.

Advisors assist those employers to conduct hazard and safety system assessments and develop safety practices and solutions. In collaboration with the IPaM Advisors, employers develop their own business improvement plan which identifies activities and timeframes for improving safety and injury management systems. While participation is voluntary, businesses that choose not to participate are referred to the WorkCover Board for premium review.

Data for the 2011-2012 calendar year shows positive trends in terms of reducing claims and costs for employers, and overall costs to the workers' compensation scheme:

- Average total costs for the list of 1200 IPaM employers decreased by more than 10% compared to the WorkCover scheme. Those businesses being actively case managed within the program, decreased by 24% more than the scheme.
- For the current IPaM list of 1200 businesses, claims frequency (number of claims as % of wages) decreased by 18%.
- The average premium rate for the 1200 IPAM employers also decreased last year by 2% (from 2.48 to 2.44) against a scheme increase for the same period of 9% ($1.30 to $1.42).
- Total statutory claims costs for those actively case managed employers reduced by $2.2M, while the scheme increased by $3M for the same period.

Impact of injury rates on premiums

Employer's injury rates have an effect on premiums charged, as it affects not only their own Experience Based Rating (EBR) but also their industry's rate and the scheme's average premium rate.

Premium rates in Queensland may be further reduced if the number of injuries, claims and consequent costs for the scheme were reduced. In recent years, Victoria and New South Wales, which both have centrally funded workers' compensation schemes and integrated safety and compensation arrangements, have been successful in reducing their injury rates. A key element in this reduction has been a greater focus on injury prevention. In Victoria this has resulted in a

significant reduction in injury rates with a consequent decrease in claims costs and outstanding liabilities in the scheme. Victoria now has the lowest average premium rate in Australia.

Table 6 below shows the incidence rate of serious injuries across jurisdictions for the period 2006-07 to 2009-10. Victoria's injury rate has reduced from 9.5 injuries per 1000 workers in 2006-07 to 8.1 injuries in 2009-10. In New South Wales, injury rates reduced from 12.6 to 12.2 over the same period. In Queensland, injury rates have reduced from 15.9 to 13.8, but continue to be substantially higher than that in Victoria.

Table 6 – Incidence rates (claims per 1000 employees) and percentage improvement of serious compensated injury and musculoskeletal claims by jurisdiction.

	Past performance					
Jurisdiction	**Base period**	**2006–07**	**2007–08**	**2008–09**	**2009–10**	**Percentage improvement (%)**
South Australia	18. 3	14.6	12.4	11.4	11.2	38.8
New South Wales	17.1	12.6	12.6	12.4	12.2	28.7
Victoria	11.3	9.5	9.0	8.6	8.1	28.3
Australian Government	8.8	6.9	5.5	6.7	6.4	27.3
Queensland	**16.6**	**15.9**	**16.3**	**15.0**	**13.8**	**16.9**
Tasmania	16.2	15.7	14.7	14.8	13.7	12.3
Western Australia	12.5	12.3	12.3	11.7	11.0	12.0
Northern Territory	12.4	11.4	12.1	11.0	11.2	9.7
Australian Capital Territory	11.4	11.6	11.5	11.9	12.2	-7.0
Australia	**14.8**	**12.4**	**12.1**	**11.6**	**11.1**	**25.0**

Source: Comparative Performance Monitoring Report 13th Edition

Self-insurance

The Queensland scheme, like all other Australian jurisdictions, allows employers to arrange their own insurance, through self-insurance licences, if they meet certain requirements and demonstrate the financial capacity to fully fund future liabilities. Self-insurers must also have adequate work health and safety, injury management and return to work arrangements, and the capacity to effectively manage workers' compensation. Licensing and oversight of self-insurer performance is done by Q-COMP.

There are currently 25 licences for self-insurance in the scheme. These licences cover 258 employers and approximately 170,000 workers. Self-insurers manage 10 per cent of the scheme's claims. Twelve of Queensland's self-insurance licence holders are also self-insured in at least one other jurisdiction, and seven of these insure in three or more jurisdictions. New South Wales has 60 licensed self-insurers and seven specialised insurers for particular industries. Victoria has 38 licensed self-insurers.

Eligibility for self-insurance licence

Self-insurance in Queensland is accessible by employers with a record of sound performance in managing safety and rehabilitation as well as the financial capability to fund their own workers' compensation costs and liabilities.

Q-COMP may issue or renew a licence for a single or group employer to be a self-insurer if the employer meets the following criteria[3]:

- The number of full-time workers employed in Queensland is at least 2,000.
- Work health and safety performance is satisfactory.
- The licence will cover all workers employed in Queensland.
- The employer has given Q-COMP an unconditional bank guarantee or cash deposit for either $5 million or 150% of the self-insurer's estimated claims liability (whichever is greater)
- The employer has reinsurance cover, of not less than $300,000.
- All workplaces are accredited by Q-COMP, or if not are adequately serviced by a rehabilitation and return to work coordinator who is in Queensland and employed under a contract (the contract can be a contract of service).
- The employer has workplace rehabilitation policies and procedures.
- The employer is fit and proper to be a self-insurer.

The current criteria for becoming a self- insurer vary across jurisdictions. A Queensland employer currently seeking to self-insure must have more than 2,000 full-time workers. New South Wales requires an employer to have 500 workers, which is the same threshold that was required in Queensland prior to amendments in 1999. No other jurisdictions have a formal requirement on the number of workers, however South Australia informally requires 200 workers.

Queensland's financial requirements are less specific than those in other jurisdictions. When deciding an application for a self-insurance licence, Q-COMP must consider whether the employer is likely to continue to be able to meet its liabilities and the long-term financial viability of the employer including its profitability and liquidity. Prospective self-insurers in most other jurisdictions must provide more specific financial information. However, other jurisdictions do not specify a requirement for the self-insurer to lodge a bank guarantee for a portion of their estimated claims liability, or to have re-insurance cover.

[3] s. 71 of the Act

Statutory claims

The workers' compensation scheme provides injured workers with statutory benefits that enable them to receive medical treatment, weekly payments of compensation (for lost wages) and rehabilitation during their recovery and return to work. Workers who are permanently impaired[4] as a result of their injury may also be entitled to a lump sum payment of compensation. For more than 95 per cent of people injured in the Queensland scheme, statutory benefits and supports enable a successful recovery and return to work.

Claims for statutory benefits are assessed on a 'no fault' basis, and benefits will be paid regardless of whether the worker or employer is at fault for the injury, if it meets the definition of 'injury' specified in the Act, as explained below.

Benefits available

The workers' compensation scheme provides a number of statutory benefits for injured workers, which include:

- Weekly compensation for lost wages;
- All reasonable medical, surgical and hospital expenses, as specified in the table of costs;
- Medical and other supplies;
- Rehabilitation treatment and equipment or services;
- Necessary and reasonable travelling expenses for the worker to obtain medical treatment or rehabilitation;
- Death benefits for dependants and funeral expenses;
- Lump sum compensation, based on the degree of permanent impairment.

Number and cost of statutory claims

In 2010-11, 103,982 injured workers lodged statutory compensation claims. This was an increase of 3.5 per cent, from 100,419 claims in 2009-10. However, given the workforce and number of employees increased during that same period, the number of claims made per 1,000 employees actually remained stable, at 46.5 per 1,000 workers in 2009-10 to 2010-11. Table 7 shows the changes in claim numbers and claim rates over the last seven financial years.

Table 7 – Lodged Workers' Compensation Statutory Claims Queensland, 2003-04 to 2009-10

Financial Year	Claims number	Claim rate per 1,000 employees	Covered employees '000
2004-05	83,485	45.4	1,840.3
2005-06	85,751	44.3	1,934.7
2006-07	98,691	48.8	2,095.2
2007-08	103,889	49.7	2,164.5
2008-09	103,688	48.3	2,219.9
2009-10	100,419	46.5	2,223.5
2010-11	103,982	46.5	2,307.8

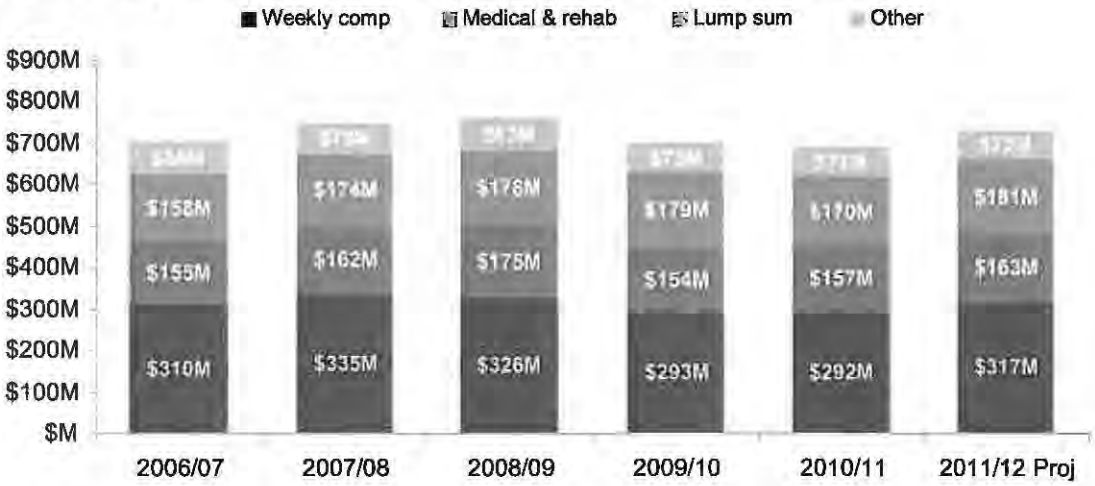
Chart 2 shows that since June 2008, the number of statutory claims lodged has been in line with employee growth, with the exception of 2009-10 where statutory claims decreased during economic downturn.

[4] Impairment is "a loss, loss of use or derangement of any body part, organ system or organ function." (p.2 AMA Guides to the Evaluation of Permanent Impairment 5th Edition). This is distinct from the concept of disability, which is not compensated in the statutory scheme. Disability is, "an alteration of an individual's capacity to meet personal, social or occupational demands or statutory or regulatory requirements because of an impairment." (p.8 AMA Guides to the Evaluation of Permanent Impairment 5th Edition).

Chart 2 – Statutory claims and Qld workforce growth rates (rolling 12-months)

Actual statutory payments for 2011-12 are expected to be $750 million compared with $677 million for 2010-11. After adjusting for inflation, the increase from 2010-11 to 2011-12 will be 9 per cent.

Chart 3 – Statutory claim payments inflation adjusted to 30 June 2011



The average cost of a statutory claim in 2010-11 was $7,070, which was down 2.1 per cent from the average cost of $7,221 in 2009-10.

Definition of Injury

A worker can receive compensation for an injury or disease if it arose out of, or in the course of, the worker's employment and the employment was 'a significant contributing factor' to the injury[5]. The degree of work relatedness required for the injury to be eligible for compensation was amended in 1999 to bring it into line with other Australian jurisdictions, from requiring work to be "the major significant contributing factor" to "a significant contributing factor". The number of statutory claims lodged in 2000 increased by 3.7 per cent, which may have been due to the lesser test for the work-relatedness of an injury.

Workers cannot receive compensation for certain psychological injuries that arise out of or in the course of reasonable management action, as they are excluded from the definition of 'injury'.

In addition, workers cannot receive compensation for injuries that are self-inflicted or caused by the worker's misconduct.

[5] Section 32

Step downs in weekly payments of compensation

Injured workers who are unable to work are paid weekly compensation in lieu of lost income.

The amount workers receive may depend on whether or not they are paid under an industrial instrument (i.e. an industrial award or agreement). For the first 26 weeks of their incapacity workers receive the greater amount of either 85 per cent of their normal pre-injury weekly earnings or:

(i) 100 per cent of their award or agreement amount (if they are paid under an industrial award or agreement), or

(ii) 80 per cent of QOTE[6] (non-award workers).

After 26 weeks, this rate steps down to 75 per cent of normal weekly earnings or 70 per cent of QOTE, whichever is the greater, for up to 2 years.

After 2 years, a worker can continue to receive compensation at the same rate if they have a work related impairment of 15 per cent or more. If their impairment is less than 15 per cent, the single pension rate applies ($347.65 per week as at 20 March 2012).

These 'step downs' in compensation are designed to encourage workers to return to work sooner, which generally results in better outcomes for the injured worker, and reduces costs for the scheme and the employer.

The Queensland scheme is a short tailed scheme and payments for weekly benefits and medical treatment cease when the first of the following events occurs:

- the worker has received compensation for 5 years; or
- the worker has been paid the maximum amount of compensation ($287,605); or
- when the worker's injury is considered stable and stationary and a lump sum payment has been made based on their permanent impairment.

This is in contrast to 'long tail' schemes in other jurisdictions, where benefits are paid for the duration of a worker's incapacity, or until retirement age.

In New South Wales[7], workers receive 95 per cent of their pre-injury average weekly earnings for the first 13 weeks of total incapacity, then 80 per cent until their entitlement ceases. Seriously injured workers (with permanent impairment over 30 per cent) will continue to receive weekly benefits until retirement age. For less seriously injured workers, weekly payments will cease after 130 weeks unless the injured worker has undertaken a work capacity test and been assessed as totally incapacitated, or partially incapacitated and have returned to work for at least 15 hours per week. Weekly payments only continue beyond five years for those workers with permanent impairment of over 20 per cent who either have no capacity to work, or have capacity and are working 15 hours or more a week.

In Victoria, workers receive 95 per cent of their pre-injury average weekly earnings for the first 13 weeks of total incapacity, and 80 per cent from week 14 onwards. After 130 weeks, benefits cease unless an injured worker has no current work capacity and that is likely to continue indefinitely.

[6] Section 107 defines QOTE as the seasonally adjusted amount of Queensland full-time adult persons ordinary time earnings as declared by the Australian Statistician in the statistician's report about average weekly earnings published immediately before the start of the financial year.

[7] The NSW workers compensation scheme was reformed by Parliament on 22 June 2012 with amendments commencing 1 July 2012.

Table 8 – Summary of income replacement entitlements for total incapacity

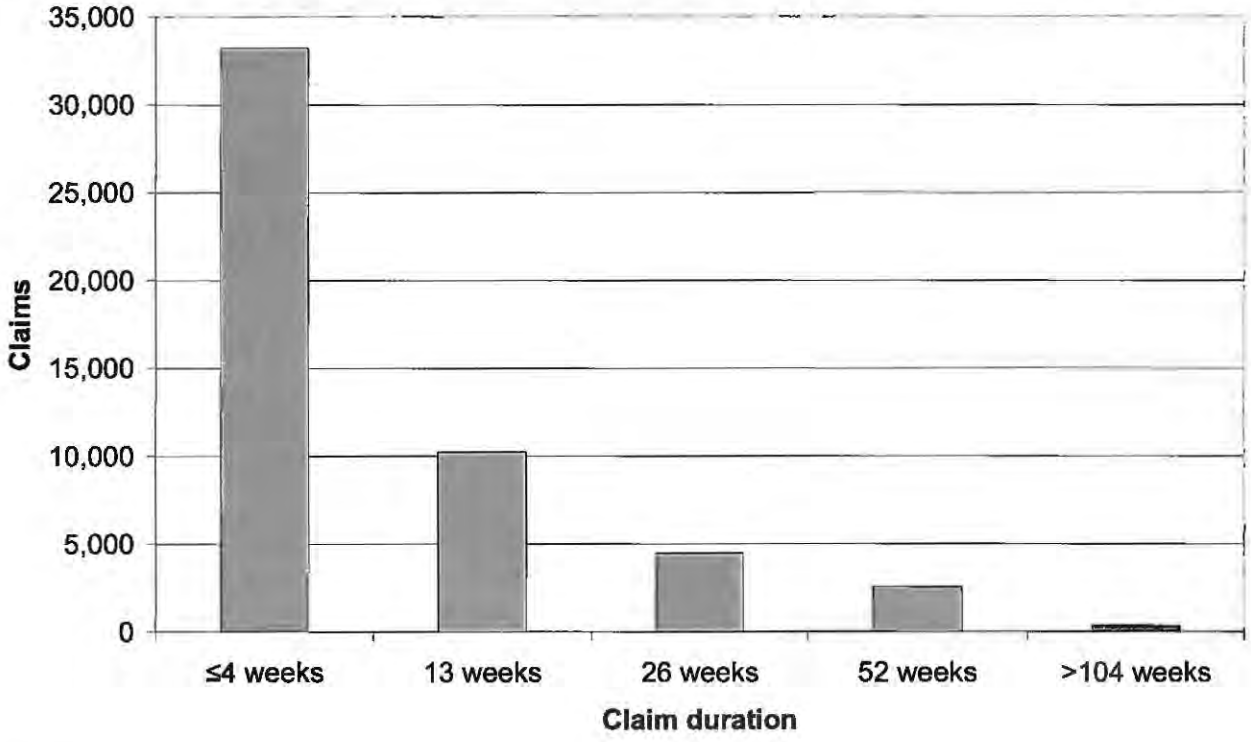
Period of total incapacity	Queensland	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	Comcare
0-13 weeks	85% of NWE (or 100% under industrial agreement)	95% up to max	95% up to max	100%	100%	100%	100%	100%	100%
14-26 weeks	85% of NWE (or 100% under industrial agreement)	80% up to max	80% up to max	100%	90%	100%	100%	100%	100%
27-52 weeks	75% NWE or 70% QOTE	80% up to max	80% up to max	100%	80%	90%	75-90%	65% or statutory floor	27-45 wks 100% 46-52 wks 75%
53-104 weeks	75% NWE or 70% QOTE	80% up to max	80% up to max	100%	80%	53-78 wks 90% 79-104 wks 80%	75-90%	65% or statutory floor	75%
104+ weeks	75% NWE or 70% QOTE if work related impairment is over 15%, otherwise single pension rate. All payments cease after 5 years.	80% up to max (subject to work capacity test after 130 wks). 5 years if ≤ 20% whole person permanent impairment (WPI). If WPI > 20%, payments may continue until retirement age.	80% up to max (subject to work capacity test after 130 wks) if still totally incapacitated and not likely to change. payments may continue until retirement age.	100%	80% (subject to capacity review after 130 wks)	80% 9 years if < 15% WPI 12 years if ≥15% WPI but < 20% WPI 20 years if ≥20% WPI but < 30% WPI	75-90%	65% or statutory floor	75%

In 2010-11, of the 92,363 statutory claims finalised, 51,609 claims were for lost time (56 per cent), and the remainder were for medical expenses only. Of all lost time claims, 98 per cent were finalised within one year and only 0.6 per cent lost time claims (310 claims) were active after two years. Table 9 shows the number and proportion of claims finalised by duration.

Table 9 – Duration of finalised statutory lost time claims

Claim duration	% of statutory claims finalised	Number of statutory lost time claims finalised
Up to 4 weeks	64%	33,186
4 -13 weeks	84%	10,208
13 - 26 weeks	93%	4,445
26 - 52 weeks	98%	2,526
52 weeks – 2 years	99.4%	934
Outstanding after 2 years	0.6%	310

Chart 4 – Finalised lost time statutory claims durations 2010-11



Statutory lump sum compensation

The Queensland scheme provides workers who have sustained a permanent impairment (see footnote 4) from their injury with lump sum compensation. The amount paid is calculated on a graduated scale based on the worker's degree of impairment, with the maximum amount available in 2012-13 $287,605.

Additional lump sum compensation is also paid to seriously injured workers whose work related impairment is over 30 per cent. As with the lump sum, the amount paid is calculated on a graduated scale, with a maximum of $287,605. Workers with a work related impairment of over 15 per cent may also receive lump sum compensation for gratuitous care, if they require day to day care. The amount of compensation is also calculated on a graduated scale depending on the level of the worker's impairment, up to $325,800.

A worker's degree of permanent impairment can be assessed once the injury is considered to be stable and stationary (i.e. . the injury has effectively reached maximum medical improvement and is not likely to improve with further medical treatment).

If a worker's level of work related impairment is assessed as less than 20 per cent, they must decide whether to accept the lump sum payment or whether to seek damages under common law.

False or fraudulent claims

A person who is found to have defrauded or attempted to defraud WorkCover or a self-insurer faces a maximum penalty of 400 penalty units or 18 months imprisonment. Q-COMP is responsible for bringing prosecutions on behalf of self-insurers.

WorkCover takes false and fraudulent claims seriously and prosecutes fraud to the extent of the law. In 2010-11, WorkCover investigated 95 cases of potential fraud, mainly relating to claims. A total of 20 cases were successfully prosecuted.

In 2011-12, seven cases so far have been successfully prosecuted, with a number of matters still before the courts. A summary of these prosecutions is available on WorkCover's website. For example, in Brisbane in November 2011 an accused person was convicted, jailed for 10 weeks and ordered to pay $13,807 in restitution for fraudulent activities against WorkCover.

Q-COMP is responsible for investigating and prosecuting workers compensation fraud on behalf of self-insurers. In 2011-12 Q-COMP filed four complaints in the Magistrates Court against workers for alleged fraud. Three of these matters were successfully prosecuted while one matter remains ongoing.

In the statutory claims process, false, fraudulent or ineligible claims are generally identified at the claims determination stage, with the effect that the claim is simply rejected in the first instance. In 2010-11, around 4,353 or 4.8 per cent of all decisions on claims were ones for rejection.

Under the Act, compensation is not payable for an injury sustained by a worker if the injury is intentionally self-inflicted, or if the injury is caused by the worker's serious and wilful misconduct (unless the injury results in death or debilitating permanent impairment).

Common law claims

The Queensland scheme also provides employers with insurance cover for the provision of common law damages. Access to common law is available to all workers in Queensland who can prove negligence against an employer and who have a work injury as defined by the Act.

If the worker's work-related impairment (WRI) is less than 20 per cent, the worker has to choose between receiving the statutory lump sum compensation payment and seeking damages at common law. If the WRI is assessed at 20 per cent or more, the injured worker can accept both the lump sum payment and seek damages at common law.

Liability and quantum are able to be contested by WorkCover and self-insurers both in the pre-proceedings process and in court. During 2010-11, the proportion of common law claims WorkCover contested in court increased. Courts delivered 13 judgments on common law claims for damages. Liability was at issue in eight of those judgments. In relation to one decision where the Court of Appeal determined that the employer was not negligent, the worker appealed to the High Court and was unsuccessful.[8]

Queensland and the ACT are the only jurisdictions to have unlimited access to common law. NSW and Victoria have limited access to common law. In NSW an injured worker must firstly meet three criteria to access common law: the injury must be attributable to employer negligence, the worker must suffer at least 15 per cent whole person impairment, and compliance restrictions upon timing of claims for lump sum compensation. In Victoria, a worker must first be assessed as having a 'serious injury' (at least 30 per cent whole person impairment or satisfying an alternative narrative test linked to disability).

However, only broad comparisons can be made between these three jurisdictions because of the diversity of these statutory thresholds and compensation amounts in the various schemes. Queensland's unlimited access to common law offsets the 'short tail' nature of the scheme, that is, workers can access common law to receive damages to meet their future needs arising from disability. This contrasts with Tasmania and Victoria that operate on a 'long tail' basis for seriously injured workers, which reduces reliance on common law damages. In NSW this system operated until recently. However, the Government has moved to cease statutory benefits after 5 years unless the injured worker has a 20% or more whole person impairment.

The finalisation of a common law claim enables injured workers to exit the workers' compensation system years earlier than in other jurisdictions. This enables WorkCover and self-insurers to reduce their tail of claims, providing significant cost savings. The lump sum payment allows workers to move on with their lives rather than remaining on benefits for many years as is the case in some jurisdictions. Tasmania introduced a long tail to its scheme when a 15 per cent impairment threshold to access common law was introduced in 2000.

Following increasing cost of claims, particularly common law claims identified in 2007-08, a review of the Queensland scheme was undertaken in 2009-10 with the recommendations being legislated by Parliament from 1 July 2010.

Number of claims

During 2010-11, 4,510 injured workers lodged a common law claim to access financial support for the impact of their injury on their life and ability to work. Common law claim frequency is steady at

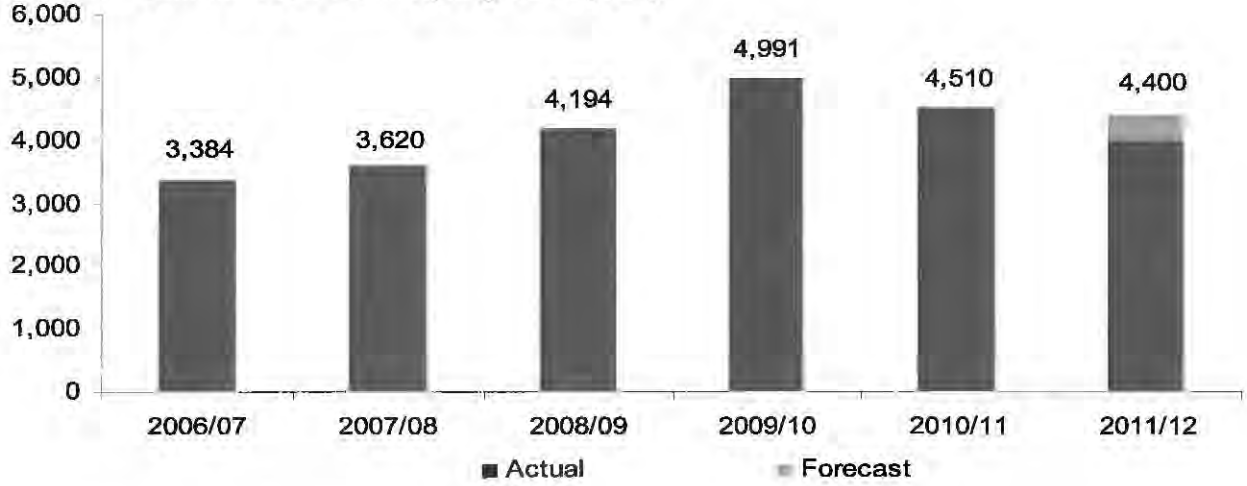
[8] *Lusk & Anor v Sapwell* [2011] QCA 059

around 0.3% of the Queensland workforce. The rate of statutory claims that convert to common law claims is steady at around 4.5 per cent.

Amendments were made to the Act in 2010 to reduce the number of common law claims being lodged, and the costs of these claims. One such amendment was to specify that a breach of the *Work Health and Safety Act 2011* does not create a civil cause of action. A worker must therefore demonstrate another cause of action, such as negligence, to proceed with a common law claim.

Chart 5 shows the trends in common law lodgements in the last six years. Following the 2010 amendments, common law claims have reduced and have stabilised over the recent two years.

Chart 5 – Common law claims (lodgement year)



Cost of common law claims

While common law claims make up only a small percentage of claim numbers, they represent a significant part of scheme costs. In 2010-11 common law claims made up 46.0 per cent ($578.2 million) of claim costs and the total amount spent on statutory claims made up 54.0 per cent ($677.8 million). In addition, the average cost of a common law damages claim settlement ($120,150 in 2010-11) is around 17 times higher than the average cost of a statutory claim ($7,070 in 2010-11).

The cost of a common law claim can include payments for loss of earnings, pain and suffering, plaintiff legal costs, and medical and hospital costs.

The amount that can be awarded for loss of earnings is capped, based on the earnings of the injured worker. The maximum award a court may make is for an amount equal to the present value of three times Queensland Ordinary Time Earnings (QOTE) per week for each week of the period of loss of earning.

The legislative amendments in 2010 also introduced caps on the amount of general damages that can be awarded for pain and suffering, loss of amenity, loss of expectation of life and general disfigurement. The caps align the workers' compensation scheme with the *Civil Liability Act 2003,* and limit the amount of compensation that can be awarded to an injury based on the severity of the injury, or its 'injury scale value'.

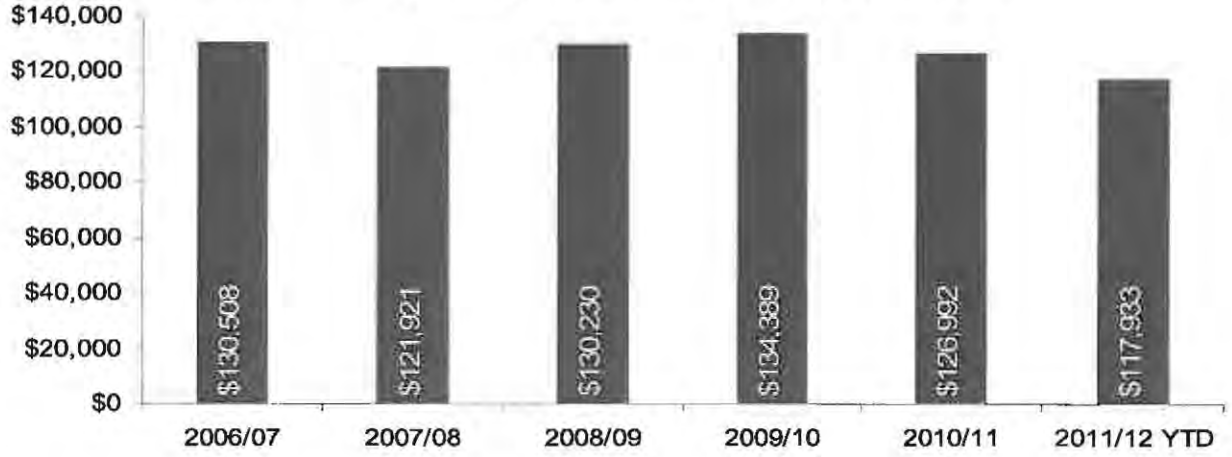
Workers cannot receive damages for paid domestic services where they have been, are to be, or ordinarily would be, provided gratuitously to a worker by a member of the workers' family or household. Services of this nature include assisting with personal hygiene needs, cleaning, cooking,

housekeeping and mowing the lawn, if the service is provided free by a member of the worker's family or household, or by a friend of the worker. This exclusion was introduced in 1996.

The courts may also award costs against plaintiffs whose claims are dismissed, a provision which was introduced in 2010.

Data suggests that the 2010 legislative amendments have had an effect on reducing common law claims costs. Common law settlement payments have reduced over the recent two years. A result of the caps on general damages, average general damages payments have decreased by 56 per cent ($31,600 to $13,900) when comparing similar pre-reform and post-reform cohorts. Chart 6 shows the trends in average damages payments, adjusted by inflation, over the last six years.

Chart 6 – Common law average damages inflation adjusted to 30 June 2011



Following the 2010 reforms, WorkCover also altered its strategy, developed in conjunction with stakeholders, for settling common law claims, to help contain claim costs. This involves, where a claim is valid, making the best offer early then defending the position taken. Since 2010 there has been an increase in the number of claims that have been settled close to the initial offer amount. As this policy works its way through, litigation rates have increased from 7% to 15%.

There has also been an increase in claims that WorkCover has finalised for nil damages, this increased from 12 per cent in 2010 to 16 per cent in April 2012. The introduction of the Injury Scale Value (ISV) to determine general damages has contributed to the reduction in average common law costs. Since 2010 there has been an increase in the proportion of withdrawn notices of claim from 4 per cent to 9 per cent, and there have been an increased number of multiple claims being brought into the one settlement.

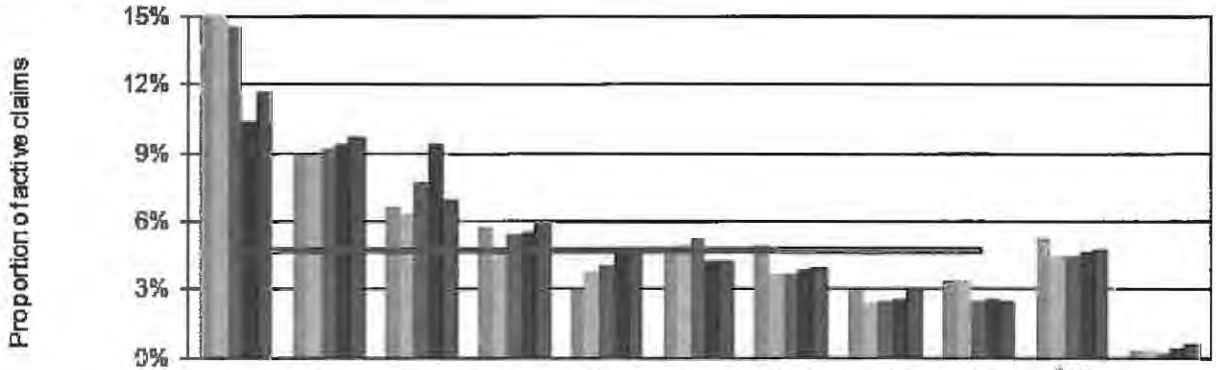
Also while claim numbers have stabilised, there has been an increasing proportion of claims lodged with 0% impairment (up from 19% to 25%) – this has also impacted on average damages reducing as damages for these claims are generally smaller.

Dispute Resolution at Q-COMP

Q-COMP's regulatory functions include undertaking and administering a range of dispute resolution processes in relation to worker's compensation claims.

In comparison with other jurisdictions, disputes in Queensland as a proportion of annual claims are generally significantly lower. Queensland also has more timely and efficient dispute resolution processes than other jurisdictions, comparable operating costs and relatively low appeal rates.

Chart 7 – Disputation rate



	Scare	Vic	SA	Tas	NT	C'care	NSW	Qld	WA	Aus Av	NZ
2005-06	26.9%	9.0%	6.6%	5.8%	3.0%	4.8%	4.9%	3.0%	3.4%	5.2%	0.3%
2006-07	22.2%	8.9%	6.4%	4.9%	3.8%	5.0%	3.7%	2.4%	3.4%	4.5%	0.3%
2007-08	14.6%	9.2%	7.7%	5.5%	4.1%	5.3%	3.7%	2.5%	2.5%	4.5%	0.3%
2008-09	10.4%	9.4%	9.4%	5.6%	4.8%	4.3%	3.9%	2.6%	2.6%	4.7%	0.4%
2009-10	11.7%	9.7%	6.9%	5.9%	4.8%	4.3%	3.9%	3.0%	2.5%	4.7%	0.6%
2009-10 Aus Av											

Source: Comparative Performance Monitoring Report 13th Edition

Reviews of insurer decisions

The review process was introduced in 1997 to provide prompt and economical resolution of disputes. Workers and employers aggrieved by insurer decisions can apply to Q-COMP to review a decision. Q-COMP has 25 business days to make a review decision. The review process is an administrative process – a review on the papers – rather than an adversarial or judicial process. The review process in most instances removes the need for a longer and more expensive adversarial court process. The review process has consistently resulted in less than 16 per cent of disputes proceeding to an appeal to the Queensland Industrial Relations Commission or Industrial Magistrate. Approximately 45 per cent of review decisions are in favour of the aggrieved party.

The dispute rate of insurer claims and premiums decisions is low compared to other jurisdictions. Last year there were a minimum of 155,000 premium decisions and 104,000 claims decisions resulting in a total number of 3,333 review applications to Q-COMP, or 1.29 per cent of all decisions. Disputation rates in other jurisdictions (e.g. South Australia) tend to be higher because purely no fault, long tail schemes allow claimants to question more decisions in the claims process, and tend to rely on mediation to resolve disputes in the first instance. By contrast, the Queensland review process is more prompt than any other Australian scheme and runs at a relatively low cost (see Table 1).

As at May 2012, the average cost per completed review (financial year to date) was $1,100. Ninety per cent of reviews (without extension or procedural fairness processes) were decided within 25

days. For the financial year to date, 46 per cent of total reviews were decided within 25 business days (62 per cent for month of May 2012).

Appeals of Q-COMP review decisions

Workers and employers who are aggrieved by Q-COMP's review decision can appeal to the Queensland Industrial Relations Commission (QIRC), unless the decision relates to an employer's premium, in which case the Industrial Magistrate is the appeal body. An appeal is a hearing de novo, which means the Commissioner or Magistrate will hear both sides of the appeal and decide based on the facts and evidence presented during the hearing.

The appeal rate (appeals served over review outcomes) for the 12 months to May 2012 is 15.6 per cent. Approximately 70 per cent of appeals are withdrawn prior to hearing.

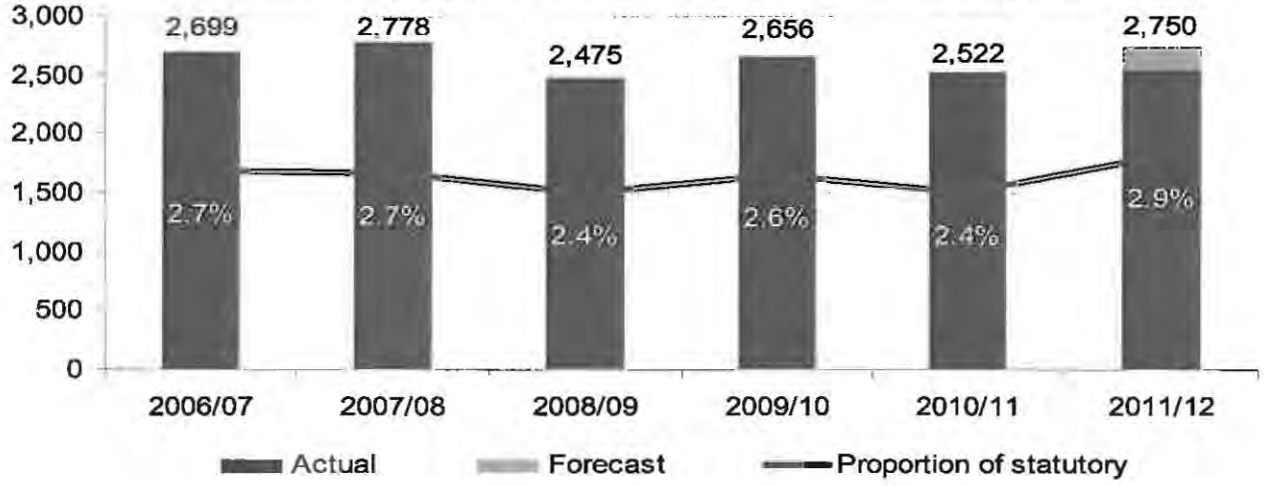
As at May 2012, the average cost of a completed appeal was $3,050. The average duration of finalised appeals to May 2012 has decreased from a rolling average of 9.0 months to 7.6 months.

Medical assessment tribunals

Medical assessment tribunals are independent panels of specialist doctors who, on referral from insurers, provide independent, expert medical decisions about injury and impairment sustained by workers. Decisions of tribunals are final and binding unless fresh medical evidence, not known about the worker at the time of the tribunal's decision, can be produced within 12 months of the decision.

In 2010-11, 2,522 tribunal referrals were received. Tribunal referrals have remained at a relatively stable level since July 2009 with some seasonal movements. Referrals have been consistent relative to statutory claims, at around 2.5 per cent of total statutory claims.

Chart 8 – Tribunal referrals per year and as a proportion of total statutory claims



As at May 2012, the average cost per case determined was $2,300. 75 per cent of block booked hearings occurred within eight weeks of referral (usually around 85 per cent, but lower this year due to higher than expected referrals early in the financial year). 83 per cent of other hearings occurred within 10 weeks. 94 per cent of tribunal decisions are sent within six days of the tribunal hearing.

Rehabilitation and return to work

It is intended that the workers' compensation scheme should "provide for employers and injured workers to participate in effective return to work programs."[9]

Worker obligations

An injured worker must satisfactorily participate in rehabilitation as soon as practicable after the injury is sustained and for the period for which the worker is entitled to compensation. If the worker fails or refuses to participate in rehabilitation without reasonable excuse, the insurer may, by written notice given to the worker, suspend the worker's entitlement to compensation until the worker satisfactorily participates in rehabilitation.

Employer obligations

Employers in Queensland with wages of $6.692 million for the preceding financial year, or which are in a high risk industry (as defined) with wages of $2.037 million for the preceding financial year, must have workplace rehabilitation policy and procedures accredited by Q-COMP and must appoint a rehabilitation and return to work coordinator.

As at December 2011, 2,925 employers in Queensland had accredited workplace rehabilitation policies and procedures. 9,563 rehabilitation and return to work coordinators were registered with Q-COMP.

Of the employers required to have accredited workplace rehabilitation policies and procedures, from 2009-10 to 2011-12 (year to date), 11-14 per cent of employers for each financial year had no statutory claims, 36-44 per cent experienced 1-5 statutory claims and 17-20 per cent experienced 6-10 statutory claims, with the remaining 25-34 per cent experiencing higher statutory claim numbers.

Insurer obligations

An insurer must take the steps it considers practicable to secure the rehabilitation and early return to suitable duties of workers who have an entitlement to compensation. An insurer is responsible for coordinating the development and maintenance of a rehabilitation and return to work plan in consultation with the injured worker, the worker's employer and treating registered persons. If an injured worker is unable to return to work with the worker's former employer when the claim ceases, the insurer must notify Q-COMP, which is then able to refer the worker to job placement or retraining services.

Q-COMP obligations

Q-COMP provides rehabilitation and return to work advisory services for workers, employers and insurers and ensures employers and insurers comply with their rehabilitation requirements under the Act.

Q-COMP commenced *Return to work assist* in 2008 as a pilot program for injured workers to access if they do not have a job to return to at the end of their workers' compensation claim. Following legislative amendment in 2010, it is mandatory for insurers to refer injured workers, but it is voluntary for injured workers to participate. Approximately 200 referrals are received each month. Within this program there is currently an 84 per cent return to work rate for those injured workers successfully contacted who have a capacity to participate.

[9] Section 5(4)(d) of the Act

Return to work rate

In 2010-11, based on insurer data the scheme return to work rate (WorkCover and self-insurers) was 93.7 per cent. Q-COMP's *Return to work assist* program contributed an additional 1.6 per cent to the return to work rate, resulting in a combined rate of 95.3 per cent.

For the 2011-12 year to April 2012, based on insurer data the scheme return to work rate is 97 per cent. Q-COMP's *Return to work assist* program has contributed an additional 1.5 per cent to the return to work rate, resulting in a combined rate of 98.5 per cent.

Recent scheme reviews and outcomes

Ensuring sustainability and fairness

In 2007-08, WorkCover Queensland recorded an operating deficit of $381 million before tax, followed by an $894 million deficit before tax in 2008-09. These deficits were absorbed by investment reserves.

In 2009, the WorkCover Queensland Board commissioned a business review that identified the drivers of WorkCover's financial position as a combination of three factors:

- the increasing cost of claims, particularly a disproportionate increase in common law claims payments and the number of claims when compared to statutory claims payments and the number of claims;
- premium income not keeping pace with net claims growth; and
- two consecutive years of negative investment returns.

Following the release of a discussion paper, *Ensuring Sustainability and Fairness*, 60 submissions were received from scheme stakeholders. A series of stakeholder reference group meetings were also held. Following this process of consultation the government adopted a package of measures that resulted in the following legislative amendments.

Harmonisation with Civil Liability Act

The treatment of common law claims under the Act was brought more into line with claims under the *Civil Liability Act 2003* in terms of liability (standard of care), contributory negligence and caps on general damages (pain and suffering) and damages for economic loss.

The adaptation of Civil Liability Act provisions on liability and contributory negligence resulted in workers having to prove they took precautions against foreseeable and significant risks of harm, where a reasonable person in the position of the person would have taken the precautions. The doctrine of voluntary assumption of risk does not apply because the courts have recognised that it is inappropriate in an employment context. However, obvious risks can be taken into account in determining the extent of contributory negligence on the part of an injured worker.

General damages were capped at $300,000 (indexed annually). General damages make up the smaller proportion of damages awards, and are relatively stable across different personal injury schemes. Awards of general damages of more than $300,000 are extremely unusual in workers' compensation matters. The Injury Scale Value (ISV) to determine general damages was also introduced.

Damages for economic loss were capped at three times the annual rate of Queensland Ordinary Time Earnings for the purposes of calculating loss of future earnings.

Increasing onus of proof on workers to prove employer fault

The 2008 judgment of the Queensland Court of Appeal in *Bourk v Power Serve Pty Ltd and Ors* [2008] QCA 225 affirmed that if a worker is injured at work and there is a causal connection between the injury and work, the employer has breached its duty under the *Workplace Health and Safety Act 1995* (repealed). The precedent set by this judgment led to increasing numbers of common law claims based on the argument that strict liability attaches to an employer if a work injury has occurred, regardless of fault.

To address this irregularity, the *Workplace Health and Safety Act 1995* was amended in 2010 to provide that no provision of that Act creates a civil cause of action based on a contravention of the provision. This exclusion has continued as part of the *Work Health and Safety Act 2011*.

Requiring third party contributors to participate in settlement negotiations

Contributors are parties that an employer or insurer considers may share liability for an injury, for example manufacturers, suppliers, designers and importers of plant. Previously, the obligations on contributors to participate in pre-court settlement conferences were not as strict as those imposed on the employer/insurer. A number of stakeholders reported that some contributors used this as a tactic to unnecessarily delay the settlement of claims.

Legislative amendments in 2010 aligned the obligations of contributors and employers/insurers with respect to exchanging relevant documents, providing a certificate of readiness and providing a written final offer to the party that has joined the contributor.

Costs against plaintiffs whose cases are dismissed

The Act previously allowed costs orders only where the court awarded more or less than a plaintiff's final written offer of damages. This had been interpreted by the courts to mean that if the claim was dismissed, no costs were payable by the plaintiff. A legislative amendment in 2010 allowed courts to make costs orders in these cases.

Structural review of institutional and working arrangements

Reasons for the review

Submissions received following the *Ensuring sustainability and fairness* discussion paper identified that stakeholders held concerns about a lack of available information on scheme performance when compared with other workers' compensation jurisdictions. In addition, concerns were raised regarding the lack of clarity around the roles of Q-COMP, the regulator, and WorkCover, the statutory insurer, as well as the role of lawyers and the level of legal costs in the system.

To address these concerns, a structural review of institutional and working arrangements in the scheme commenced in 2010. An independent reviewer, Mr Robin Stewart-Crompton, led the review. The review was supported by a stakeholder reference group comprising two employer representatives, two union representatives, two representatives of the legal profession, the chief executives of WorkCover and Q-COMP and the then Associate Director-General of the Department of Justice and Attorney-General, who chaired the group.

Mr Stewart-Crompton reported his findings in late 2010. The report of the review made 51 recommendations to improve these aspects of the scheme. Following a period of public comment, all 51 recommendations of the report were approved for implementation.

Outcomes of review

The Review report noted that stakeholders recognise that while the Queensland scheme is fundamentally sound, concerns existed about how some aspects of the scheme were managed, such as information sharing, claims administration, and common law settlement processes, rather than the scheme's overall design. The report's 51 recommendations fell within five key areas:

Roles and functions in the workers' compensation scheme

The Review report recommended the development of an overarching cross-agency strategy aimed at ensuring the more effective prevention of work-related injury and disease. The strategy requires

WorkCover Queensland, Q-COMP and Workplace Health and Safety Queensland to work together with each agency's strategic or business planning taking account of the overarching strategy.

The strategy, now implemented, allows agencies to develop, where appropriate, common or complementary goals, policies and initiatives including the identification and undertaking of relevant joint activities.

Transparency

To address stakeholder concerns regarding greater transparency, the second group of recommendations proposed action in four broad areas: improving the information flow about the scheme to persons affected by WorkCover's decisions; addressing gaps in Q-COMP's powers; requiring all government departments and agencies to adopt best practice standards of compliance with workplace health and safety and workers' compensation obligations; and requiring a review of the workers' compensation scheme at least once in each five year period after the 2012 review.

The requirement to conduct a review of the scheme every five years has passed into legislation in 2011. With the exception of the remaining recommendations requiring legislative amendment, other recommendations, such as regular actuarial presentations on claims trends and outstanding claims liability, are already in place.

Strategies to improve efficiency and effectiveness

The third group of recommendations addressed issues raised by stakeholders regarding claims management. These included WorkCover not adequately communicating with employers; insufficient investigation of claims; and perceptions of unnecessary speed in settling common law claims. To address these issues a revision to WorkCover's service charter was recommended. It was also recommended that there be seminars and plain English information on the claims management process and that medical experts be appointed to advise claims managers on medical aspects of claims.

WorkCover has published its new service charter incorporating the recommendations, and is conducting regular stakeholder forums. WorkCover has also established a Medical Advisory Panel. Senior specialists were appointed to this panel and are available to advise WorkCover claims staff.

Legal costs and management of the legal profession

The fourth group of recommendations concerned legal costs and the management of the legal profession. The report noted that concerns were frequently raised about legal costs, i.e. that these costs absorb too much of settlements or awards of damages.

While the Review was not presented with evidence of any systematic abuses or direct evidence of inappropriate behaviour by legal practitioners, the Review report recommended periodic surveys by an impartial third party to determine how much of a settlement has been paid to the various parties, and that survey reports be made publicly available. Once this information was available, discussions should occur, if necessary, on options for managing legal costs. It also recommended further research to identify how the advertising of legal services affects claims for workers' compensation.

The survey of the type recommended was subsequently determined by the then Government to involve significant cost and privacy issues and, as a consequence, this research is yet to occur. With regard to lawyer advertising, which continues to be monitored, it was acknowledged that regulation of lawyer advertising goes wider than workers' compensation matters, with the obligations of lawyers under the *Legal Profession Act 2007* sufficient in most instances. The *Fair Trading Act 1989* and the *Competition and Consumer Act 2010* (Cwlth) also prohibit advertising or activity that is false or misleading.

Concerned stakeholders are able to refer any concerns about these activities to the Legal Services Commission.

Rehabilitation and return to work

The fifth group of recommendations addressed concerns raised with respect to rehabilitation and return to work. The Review report noted the primary issues relate to the need for a greater focus on rehabilitation and return to work, including:

- more emphasis on securing compliance with the statutory obligations of employers and workers;
- better linkages between the activities of WorkCover and Q-COMP;
- better guidance material for all interested parties;
- better training and support for Rehabilitation and Return to Work Coordinators; and
- the adequacy of existing protections under the Act for injured workers who are dismissed from their employment.

With the exception of recommendations requiring legislative amendment, all recommendations were implemented. These included the Q-COMP Regional Network Program, in which 10 regional representatives were appointed and 45 regional forums held in regional Queensland to date, with over 1,299 attendees. The program promotes better understanding of rehabilitation and return to work services. Q-COMP has also appointed an experienced rehabilitation and insurance professional to specifically review and revise best practice guidance material for any person with rehabilitation and return to work obligations or needs under the workers' compensation system.

Identified issues

Definition of worker

For WorkCover to calculate an employer's premium, an employer must declare the annual amount of wages paid to all of its 'workers' as defined by the Act.

The definition of worker has evolved over time in response to changes in employment relationships. As employment under traditional arrangements has declined, and new working arrangements have emerged, the definition has been modified to ensure that persons are not engaged in non-standard employment arrangements for the purpose of evading workers' compensation premiums and to ensure that workers under these non-standard arrangements are properly covered for workers' compensation.

The Act defines a 'worker' as a person who works under a contract of service, that only an individual can be a worker and additionally that a person is a worker in particular circumstances. Any person who is a director, trustee or a partner is not a 'worker'.

Genuine contractor arrangements are not intended to be captured by the definition of 'worker'. This is achieved by excluding from the definition of 'worker' any person who has a personal services business determination in effect for the work under the *Income Tax Assessment Act 1997* (Cwlth) or who is able to satisfy all three elements of the results test. The three elements of the results test include:

- the person performing the work is paid to achieve a specified result or outcome;
- the person performing the work has to supply the plant and equipment or tools of trade needed to perform the work and;
- the person is, or would be, liable for the cost of rectifying any defect in the work performed[10].

The definition of worker varies between jurisdictions. For example, New South Wales includes a person working under a contract of service, and contractors who have entered a contract to perform any work exceeding $10 in value as workers. In Victoria, 'worker' includes people who perform work for an employer and certain contractors where the provision of materials is not the principal object of the arrangement, at least 80 per cent of the work is performed by the same person, and at least 80 per cent of the contractor's services income is earned from the hirer, unless WorkSafe determines that the arrangement is part of the contractor's independent trade. The Northern Territory recently aligned its definition of 'worker' with the definition used in Queensland, and includes all persons performing work for another person unless they satisfy the results test.

Premium Incentives

The EBR system is the primary incentive used to promote strategies to reduce the rate of work-related injuries. Since the introduction of EBR in Queensland, many enhancements, especially in the early years post implementation, have been made to the way EBR works. Additional improvements have been suggested to the EBR formula to even further incentivise employers to lift their injury prevention and management performance including more immediate recognition of enhanced safety and return to work outcomes.

In considering any changes to premium calculation, the following principals should be considered:

- stability and predictability
- equity – over time, between employers
- incentives are provided

[10] Section 11 and Schedule 2 of the Act

- timely in its responsiveness
- simplicity in communication and implementation.

A premium discount scheme operated in New South Wales between 2001 and 2003, which provided a discount of up to 15 per cent to employers who successfully implemented health and safety injury management systems. However, this incentive was ceased. A no claims discount was also considered in 2003, but was not adopted as it would have required an increase in premium rates across the board to fund the discount. It was also suggested that a no claim bonus may lead to employers discouraging their workers from making claims and failing to report injuries.

Recess and journey claims

The scheme provides compensation for injuries that occur while a worker is on an ordinary break from their workplace, or on their journey between their home and workplace (provided there has not been a substantial delay before commencing the journey or a deviation from the usual journey) by deeming such injuries to arise out of the worker's employment. Journey claims are excluded in Victoria, Western Australia and Tasmania. New South Wales, South Australia and the Commonwealth provide only limited coverage. However, depending on the arrangements in place in these jurisdictions injured workers may be covered by other schemes such as a no fault motor vehicle accident insurance scheme.

In Queensland, as well as the workers' compensation scheme covering journey claims, the Motor Accident Insurance Commission (MAIC) operates a fault based motor vehicle accident scheme. While it is expected that MAIC would cover more motor vehicle incidents if journey claims were abolished under the *Workers' Compensation and Rehabilitation Act 2003,* there will be gaps. These include slips, trips and falls while walking to work.

In addition, journey claims provide protections to workers who are injured in no-fault traffic accidents, who would not be able to demonstrate an element of negligence required to claim against the Nominal Defendant under the *Motor Accident Insurance Act 1994*. In Victoria, a dedicated statutory no-fault transport accident scheme provides such coverage. Any expansion of the coverage of the *Motor Accident Insurance Act 1994* would be a matter for the Treasurer's consideration.

The costs of journey claims are not taken into account when determining an employer's EBR, in recognition of the fact that employer's do not exercise control over the safety of their workers on their journeys to and from work. However, the total cost to the scheme from journey claims is approximately $45 million per year, equivalent to $0.05 of the average premium rate.

Protection of injured workers' personal information

It is intended that the scheme "...provide for workers or prospective workers not to be prejudiced in employment because they have sustained injury".[11]

The Act prohibits an employer from accessing or asking a worker or prospective worker to supply his or her workers' compensation claims history when advertising a position or for assessing continued employment. However, if a position has specific physical requirements, an employer has the option of obtaining a pre-employment medical assessment for the preferred applicant.

Claims histories, known as injury payment profiles, do not provide sufficient detail to match a worker's capabilities to specific job duties, nor do they address other health issues or previous injuries sustained outside the workplace, for example sporting activities or motor vehicle accidents.

[11] Section 5(4)(da) of the Act

Victoria also prohibits a person's claims history being used for employment screening purposes. Western Australia, acting on legal advice, recently discontinued the practice of providing individuals' claims histories, regardless of whether consent had been obtained, to employers and prospective employers. In New South Wales, the report of the Joint Select Committee on the NSW Workers Compensation Scheme recommended that "given the financial and other impacts on workers of not returning to work," a "ban on employers requiring applicants to disclose workers compensation history" be fully explored by the proposed joint standing committee established to conduct ongoing oversight of the NSW scheme.

Solar/passive smoking injuries

New categories of compensable latent onset injury, such as cancers related to passive smoking and sun exposure, are beginning to appear in a workers' compensation context. For example, solar claim intimations have increased from around 20 claims per quarter to over 40 claims per quarter during the past 2 years. The average cost for a solar claim is over $50,000. It is expected that these types of claims will continue to increase into the future.

Unlike typical "occupational" diseases such as silicosis, emerging compensable conditions may include significant non-work related exposure. Claims for work-related solar and passive smoking injuries are currently rare but are expected to increase in the future.

The Act did not contemplate these types of claims and no other jurisdiction yet has a particular approach. This issue is currently being examined at national level as part of a Safe Work Australia-convened Strategic Issues Group on workers' compensation issues.

Firefighters presumptive compensation laws

In 2011, the Australian Parliament passed the *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011*. The Act presumes as work-related a number of specified cancers sustained by firefighters in the Australian Capital Territory and those privately employed by airports. This creates an automatic entitlement to workers' compensation.

Presumptive laws became more prominent following the 9/11 terrorist attacks in 2001, and now operate in many US states and 90 per cent of Canadian provinces. Most US schemes prohibit common law actions, and many have a five year statute of limitations on applying for statutory benefits. Presumptive laws provide workers who sustain work-related latent onset injuries, such as cancer, with access to compensation that would otherwise be denied under time limitations.

Under Queensland legislation[12], the definition of "injury" captures genuinely work-related cancers, and claims are not time limited. Under the definition, any injury is compensable as long as it arises out of, or in the course of, employment if the employment is a significant contributing factor to the injury.

A number of overseas studies have asserted that firefighters are more likely to suffer particular cancers such as testicular, bladder, prostate, brain, rectum, leukaemia and non-Hodgkin's lymphoma. However, a 2009 Monash University study into Queensland firefighters did not identify any statistically significant excess risk of cancer in firefighters.

Following the Queensland study, the Australasian Fire and Emergency Service Authorities Council commissioned Monash University to undertake a further, three-year study of professional and volunteer firefighters, with research to focus on Australian conditions. The cancers of primary interest are brain and central nervous system malignancies, melanoma, testicular cancer, prostate

[12] Section 32 of the Act.

cancer, bladder cancer, non-Hodgkin lymphoma, multiple myeloma, and for women, cervical cancer, thyroid cancer and breast cancer.

Self insurance criteria

The criteria used to determine an employer's eligibility to self-insure has been criticised as being too restrictive in comparison with other jurisdictions, particularly the requirement to have 2000 workers to be eligible for self-insurance. At the time the then Queensland Government introduced this threshold for self-insurance, it want only large high companies with the internal resources to manage an insurance business to be eligible. Reducing this threshold for employers to self-insure may have an impact on the residual premium pool managed by WorkCover. A reducing premium pool could contribute to increased volatility year on year in the scheme, which may result in increased volatility in average premium for employers over time.

While Queensland has the 2000 worker threshold, the rates of self-insurance in Queensland are comparable to other jurisdictions. The current Queensland self-insurance licences cover more employers than in any other jurisdiction (253, compared with 168 in New South Wales), the second highest number of employees (approximately 181,750 after New South Wales with 715,000) and the third highest proportion of employees when compared to the State's total workforce (at 9.6 per cent, after South Australia's 37.78 per cent and New South Wales' 23.1 per cent).

Cameron v Foster

The Act prevents a court from awarding damages for paid domestic services where they have been, are to be, or ordinarily would be, provided gratuitously to a worker by a member of the workers' family or household. Services of this nature include assisting with personal hygiene needs, cleaning, cooking, housekeeping and mowing the lawn, if the service is provided free by a member of the worker's family or household, or by a friend of the worker. This exclusion was introduced in 1996.

In *Foster & Anor v Cameron* [2011] QCA 48 (*Cameron*), the worker had paid for some of the services after the accident and before trial, and had received some gratuitously. The Court of Appeal found that, regardless of Parliament's intent, the Act does allow an injured worker to convert gratuitous services into paid services after trial, as the Act was not clear on whether damages could not be awarded where services were both paid and gratuitous.

The Commission of Audit in its Interim Report noted that:

> *[WorkCover's] future profitability may be adversely impacted by the 2010 case of Cameron v Foster, which [WorkCover] lost on appeal. This case...may increase the overall cost of claims in the future, unless changes are made to legislation to exclude these costs. [WorkCover] advise that, to date, the Cameron v Foster case has not impacted as initially expected.* (p 176)

Appendix 1 – Major reviews of the Queensland workers' compensation scheme

1996

Concern about the potential extent of the unfunded liabilities of the then Workers' Compensation Board of Queensland, together with other factors, led to the establishment of a Commission of Inquiry by the newly formed Borbidge government. The *Inquiry into Workers' Compensation and Related Matters in Queensland* was headed by Mr Jim Kennedy AO. The Kennedy Report made a total of 79 recommendations in relation to the provision of workers' compensation in Queensland. The report revealed a 'black hole' of $320 million in unfunded liabilities.

Most of the Kennedy recommendations were incorporated in the *WorkCover Queensland Act 1996*, with the exception of recommendations to abolish journey claims and introduce thresholds for common law access, which did not proceed.

1999

The Beattie Government released the *Restoring the Balance* position paper with the aim to restore pre-1996 definitions of "worker" and "injury" and overhaul the review process to improve procedural fairness and transparency. Self-insurance licensing criteria was also expanded, with the employee threshold increased from 500 to 2,000 full time equivalents. Legislative amendments followed.

2000

A National Competition Policy (NCP) Legislation Review of the *WorkCover Queensland Act 1996* was conducted in accordance with the intergovernmental NCP agreement. The review recommended retaining WorkCover Queensland's monopoly insurer status but that its regulatory arm be separated from the organisation and set up as an independent entity. Legislation established Q-COMP as a statutory body to regulate Queensland's workers' compensation scheme.

2005

A number of outstanding matters from the 2000 NCP review were addressed in the *Report of the National Competition Policy Review of Certain Aspects of the Workers' Compensation and Rehabilitation Act 2003*. These issues included:

- exclusive claims management by WorkCover Queensland;
- self-insurance licensing criteria; and
- the use of allied health professionals; and workplace rehabilitation requirements.

The Report recommended the relaxation of some aspects of the self-insurance licensing criteria and workplace rehabilitation requirements to allow self-insurers and employers greater flexibility in organising their workers' compensation and rehabilitation arrangements. These were accepted by government and legislative amendments followed. No changes to the use of allied health professionals or claims management by WorkCover Queensland were recommended.

2007

As a result of the decision of the WorkCover Queensland Board to reduce the average premium rate to $1.15 per $100 of wages paid, the government again engaged Mr Jim Kennedy AO to conduct *A Limited Review of the Queensland Workers' Compensation Scheme*. The purpose of the review was to gauge the sustainability of this rate for the next three years, as well as to recommend a modest package of improved worker benefits.

Mr Kennedy, following consultation with WorkCover's actuary, advised that the current rate was sustainable for three years but that he could not forecast its sustainability beyond then. The revised benefits package consisted of removing the one and two year step-down of weekly benefit entitlements, and increasing the quantum of and access to the maximum additional lump sum compensation payable for more seriously injured workers.

2010

Following two consecutive years of operating deficit, the WorkCover Board initiated a review process in August 2009, advising government in November 2009 of three factors that, left unchecked, could threaten WorkCover's continued full funding. The factors were:

1. a growth in net claims expenditure, incorporating an increase in common law claim numbers in comparison to the growth of statutory claim payments and number of claims;
2. premium income not keeping pace with net claims growth; and
3. two consecutive years of substantial negative investment returns due to the global downturn in investment markets.

The following February, the government released policy options for public comment. Sixty submissions were received regarding the various options. Legislative amendments, mainly focussed around the growth in common law claims, were passed in June 2010.

The Government also commenced a structural review of the workers' compensation scheme in response to concerns about a lack of available information on scheme performance when compared with other workers' compensation jurisdictions. In addition, concerns were raised regarding the lack of clarity around the roles of Q-COMP, the regulator, and WorkCover, the statutory insurer, as well as the role of lawyers and the level of legal costs in the system.

The report of the review made 51 recommendations to improve these aspects of the scheme. Following a period of public comment, the Government approved the implementation of all 51 recommendations of the report in March 2011.

More detailed information on these two most recent reviews is available under the chapter entitled "Recent scheme reviews and outcomes."

Appendix 2 – Summary of key workers' compensation scheme indicators

Jurisdiction	Fund type	Workers covered (2008-09)	Self-insurers	Average Premium Rate	Funding ratio	Incidence of serious claims per 1000 employees (2008-09)	Compensated deaths per 100,000 employees (2008-09)	Journey claims	Common law	Benefits structure
QLD	Central	1,857,900	25 (covering 181,748 (10%) workers, 0.16% of employers)	1.45% - 2012-13 1.42% - 2011-12 1.30% - 2010-11 1.15% - 2009-10	117 per cent (projected 30 June 2012)	16.7	4.2	Yes	Yes	2 yrs unless injury is not stable & stationary 5 years maximum
NSW	Hybrid	3,008,600	67 (covering 650,000 (17%) workers)	1.68% - 2012-13 1.68% - 2011-12 1.66% - 2010-11 1.69% - 2009-10	78 per cent (31 Dec 2011)	14.2	2.0	Limited	Limited	5 yrs if WPI ≤ 20% retirement age if WPI > 20%
VIC	Hybrid	2,447,800	38 (covering 145,400 workers, 0.09% of employers)	1.29% - 2012-13 1.34% - 2011-12 1.34% - 2010-11 1.39% - 2009-10	97 per cent (31 December 2011)	9.9	1.4	No	Limited	Long tail (subject to work capacity test)
SA	Hybrid	705,100	67 (covering 36.5% of workers, 0.35% of employers)	2.75% - 2012-13 2.75% - 2011-12 2.75% - 2010-11 3.00% - 2009-10	61.6 per cent (31 December 2011)	12.8	1.1	Limited	No	Long tail (subject to work capacity test)
WA	Private	1,047,700	27 (covering 97,314 workers)	1.69% - 2012-13 1.55% - 2011-12 1.50% - 2010-11 1.74% - 2009-10	n/a	12.1	2.3	No	Limited	Long tail
TAS	Private	211,800	13 (covering 12,647 (6.1%) workers)	2.28% - 2012-13 2.19% - 2011-12 2.10% - 2010-11 1.97% - 2009-10	n/a	16.5	2.4	No	Limited	9 yrs if < 15% WPI 12 yrs if ≥15% WPI but < 20% WPI 20 yrs if ≥20% WPI but < 30% WPI Retirement age if WPI > 30%
ACT	Private	128,800	8 (covers 0.07% of employers)	2.16% - 2011-12 n/a - 2010-11 2.44% - 2009-	n/a	12.7	2.7	Yes	Yes	Long tail
NT	Private	109,800	4 (covers 4,725 (4.3%) workers)	2.20% - 2011-12 2.10% - 2010-11 2.10% - 2009-10	92.3% (30 June 2011)	11.7	5.5	Yes (excludes motor accidents)	No	Long tail
CWLTH	Central	367,000	29 (covers 160,000 (44%) workers, 13% of employers)	1.80% - 2012-13 (budget target) 1.41% - 2011-12 1.20% - 2010-11 1.25% - 2009-10	74 per cent (2012-13 Budget target)	7.3	1.7	No	Limited	Long tail

Appendix 3 – Structural review recommendations

Recommendation 1.1

There should be an overarching cross-agency strategy for more effectively preventing work-related harm and responding to its consequences, which should be developed for ministerial endorsement by 31 March 2011. WHSQ should be responsible for managing the development of the strategy.

Recommendation 1.2

The overall goal of the strategy would be to strengthen the interaction between WHSQ, the ESO, Q-COMP and WorkCover so that the benefits of better co-ordinating their activities relating to preventing work-related harm, and responding to its consequences are realised.

Recommendation 1.3

The interaction should include:

a) sharing data and other information that is relevant to the various responsibilities of the WHSQ, the ESO, Q-COMP and WorkCover; and,
b) where appropriate, co-ordinating their activities, including the development and distribution of guidance material, with priority given to any activities of mutual benefit to some or all of the participants.

Recommendation 1.4

Under the strategy, WHSQ, the ESO, Q-COMP and WorkCover, should be required:

a) when each engages in strategic or business planning, to take account of the goal of the overarching strategy and of any common or complementary goals, policies and programs of the participants; and
b) to identify and, where appropriate, undertake joint activities that would assist in achieving the goal of the overarching strategy.

Recommendation 1.5

The strategy should be outcome based. Activities and results would be reported against the strategy's key result areas in existing periodic reporting to the Minister.

Recommendation 1.6

After the draft strategy has been prepared and approved by the chief executives of the entities to which it applies, taking account of stakeholder views, it should be submitted to the Minister for Industrial Relations for endorsement.

Recommendation 1.7

Subject to the Minister's endorsing the strategy:

a) the Minister should consider seeking the Government's support for the strategy; and
b) the strategy should commence no later than 1 July 2011 and operate at least until the 2012 review of the workers' compensation scheme has taken place and the government has decided its response to the review's report.

Recommendation 1.8

Subject to the Government's support, Ministers in other portfolios in which there are safety regulators (Natural Resources, Mines and Energy; Transport) should be invited to commit to the strategy and to authorise the safety regulators concerned to participate.

Recommendation 1.9

Easy to understand guidance about the respective roles, powers and functions of Q-COMP, WorkCover, WHSQ, the ESO and DJAG and how they interact should be prepared jointly and made available on their websites. Such guidance should include links to more detailed material which may be found on those web sites.

Recommendation 1.10

Instead of WorkCover providing funding to Q-COMP which includes funding for WHSQ, WorkCover should provide funding separately to Q-COMP and to WHSQ. Q-COMP should continue to provide, under s.479 of the Act, amounts collected from self-insurers to WHSQ.

Recommendation 2.1

At least until the government's response to the 2012 review is known, WorkCover and Q-COMP should agree, for example, through a MOU, on a program of twice-yearly joint presentations to all interested stakeholders reporting on:

a) the financial status of the fund, including an actuarial report; and
b) performance in all areas that are critical for the scheme's ongoing viability and the achievement of its objectives.

Recommendation 2.2

The data so presented and related material information should be available as soon as reasonably possible for interested persons.

Recommendation 2.3

Q-COMP should be empowered under the Act to develop, subject to the regulatory assessment statement process, minimum advisory standards in respect of prescribed matters for the workers' compensation scheme, and recommend such standards to the Minister. If the Minister agreed to a proposed standard, it would be published in the *Gazette*. Such standards could not be inconsistent with the Act or WCR Regulation or any other applicable law and should not be inconsistent with any standards set by WorkCover in relation to matters for which WorkCover is responsible. Where Q-COMP considered it appropriate, it should be able to set licence conditions for a self-insurer which was inconsistent with a minimum advisory standard.

Recommendation 2.4

Where an insurer did not comply, or did not intend to comply, with an applicable standard, the insurer should be required to provide written notice as soon as reasonably possible to Q-COMP and, in the case of WorkCover, to Q-COMP and the Minister, explaining the reason for non-compliance.

Recommendation 2.5

Q-COMP should be required to include information about such non-compliance by insurers in its periodic reports to the Minister and in its Annual Report.

Recommendation 2.6

Without limiting any other matters that it might wish to consider, Q-COMP should be empowered under the Act to take into account any instances of non-compliance by a self-insurer with an applicable minimum advisory standard (and any failure to report non-compliance) when considering an application for renewal of a self-insurance licence.

Recommendation 2.7

Before making a recommendation to the Minister for a code of practice relating an insurer's claims management under s.486A of the Act, Q-COMP would be required:

a) to consider whether a minimum advisory standard should be gazetted instead, or if a standard had been gazetted, why a code of practice should be made in relation to the same matter; and
b) to advise the Minister of Q-COMP's views on the matter.

Recommendation 2.8

In deciding on the prescribed matters that could be the subject of minimum advisory standards, consideration should also be given to providing for a wider range of matters that may be the subject of a code of practice under s.486A.

Recommendation 2.9

The Minister should be empowered to request in writing formal advice from Q-COMP about any matter relating to the overall operation of the workers' compensation scheme and, where the Minister did so, an insurer would, under the Act, have to comply with any reasonable written request from Q-COMP:

a) for information or data in relation to the matter to which the Minister's request relates; and
b) for access to any persons or documents who may assist Q-COMP in responding to the Minister's request.

Note: Any powers of Q-COMP in this respect would not:

- *limit the powers exercisable by an authorised person under Chapter 12, Enforcement, of the Act, which could be extended for this purpose;*
- *displace the Minister's powers under s.486 to ask the department chief executive to investigate and report on any matter relating to WorkCover or the powers of the department chief executive under that section.*

Recommendation 2.10

Q-COMP should be required to respect the confidentiality of any information so obtained but would not be precluded from disclosing it to the Minister for the purposes of its advice.

Recommendation 2.11

The Act should be amended to require the maker of a decision that is reviewable or open to appeal under Chapter 13 of the Act to provide the person who is affected by the decision with a written information notice about that person's right to apply for review.

Recommendation 2.12

The Act should empower Q-COMP to determine the minimum qualifications for an actuary for the purposes of the Act.

Recommendation 2.13

The Act should be amended to provide for a review of the operation of the workers' compensation scheme at least once each five years after 2012.

Recommendation 2.14

The Minister should seek the government's support for all government departments, agencies and other bodies to seek to meet best practice standards of prevention in relation to work-related harm and in the use and application of the workers' compensation scheme.

Recommendation 2.15

Progress in giving effect to all matters agreed upon by the government after considering this report should be reported to the Minister in the quarterly reports by each of the implementing bodies and included in their Annual Reports.

Recommendation 3.1

WorkCover's service charter should be amended as soon as reasonably possible to commit WorkCover to ongoing effective engagement with employers about claims management, including advising them at specified times of a claim's progress and what action is being taken.

Recommendation 3.2

WorkCover should continue to hold interactive seminars with interested stakeholders relating to common law claims management at least annually and should consider similar seminars in relation to statutory claims management (and return to work and rehabilitation).

Recommendation 3.3

By 31 March 2011, WorkCover should, in consultation with stakeholders, prepare easy to understand guides for employers and injured workers about what to expect in the claims process, how they can facilitate a claim's fair and effective progress, their review and appeal rights and how to obtain more information, if necessary. Similar material should be available for other persons who may be involved at a workplace (such as managers, supervisors, rehabilitation and return to work coordinators). WHSQ should contribute information on good WHS practice as to injured workers who are at work under an RTW arrangement. At the same time, Q-COMP should, in consultation with self-insurers and interested stakeholders, prepare similar material.

Recommendation 3.4

By 31 March 2011, WorkCover should review whether claims management would be improved by appointing medical experts to whom WorkCover staff managing claims could have ready access for advice on medical aspects of claims. Such experts might also be available for professional discussions with medical practitioners dealing with workers under the scheme.

Recommendation 3.5

By 31 March 2011, WorkCover should give further consideration to whether any action needs to be taken to strengthen the knowledge and understanding of centralised claims managers of regional circumstances that may be material to dealing with a claim or to provide them with better access to such knowledge and relevant information.

Recommendation 3.6

By 31 March 2011, WorkCover should, in consultation with stakeholders, review its policies and practices about the investigation of applications for compensation to consider whether WorkCover's capacity to investigate is used appropriately and to make any necessary adjustments.

Recommendation 3.7

To put the matter beyond doubt, the Act should be amended to permit WorkCover to rescind at its own initiative a decision to reject an application for compensation where WorkCover was satisfied that the decision was wrongly made or that material information had not been taken into account. Any such decision would only be able to be made where the parties were afforded due process and where WorkCover gave notice within a prescribed period of the original decision to the parties of WorkCover's intention to consider such rescission. If WorkCover took such action, it would not preclude review of the confirmed or changed decision.

Recommendation 3.8

By 31 March 2011, WorkCover should consider whether sufficient use is being made of legal panel members or other skilled practitioners to assist in the training of WorkCover staff who are engaged in claims management to improve the skills and knowledge of less experienced staff.

Recommendation 3.9

Where WorkCover is considering taking action to increase the premium of a poor performing employer, WorkCover should be able to consider accepting a voluntary undertaking about improved performance by the employer and to agree not to impose the increase if the agreed improvements occur.

Recommendation 3.10

By 31 December 2010, WHSQ should commission a survey by an impartial third party to identify why injured workers take common law actions for damages, and seek to have the results publicly available by no later than 30 June 2011.

Recommendation 4.1

WHSQ should commission periodic surveys, by an impartial third party, of claimants and lawyers (no more frequently than annually, with the results of the first survey to be available by 30 June 2011) to seek to ascertain how much of a settlement has been paid:

a) to the claimant,
b) to the claimant's lawyers
c) for medical services
d) for anything else.

Recommendation 4.2

Any survey results should be de-identified and aggregated in the survey report, so that the confidentiality of any information provided to the person conducting the survey is protected, and the survey reports should be publicly available.

Recommendation 4.3

Subject to further consideration of the information obtained through the surveys, consideration should be given in 2012 to whether there should be a statutory requirement for such information to be disclosed by legal practitioners to Q-COMP on a confidential basis.

Recommendation 4.4

After the results of the first survey are available, a conference should be promptly convened by WHSQ with the Queensland Law Society, the ALA, WorkCover, Q-COMP and other interested parties to discuss options for managing legal costs. The fixed party and party costs model used in Victoria should be an option.

Recommendation 4.5

Further work should be undertaken by WHSQ to identify how the advertising of legal services is affecting claims for workers' compensation and whether further action is required to control such activity. This should, if possible, be completed by the end of June 2011 and the results reported to the Minister.

Recommendation 4.6

By 31 December 2010, Q-COMP should prepare simple information in a check list for claimants which would explain to them in an easy to understand way:

a) that a claimant may be legitimately charged for legal and other costs relating to a claim;
b) that a claimant must be advised by a legal practitioner about such legal costs, including how they are to be met;
c) what rights a claimant has if the claimant is concerned that the charges may be excessive or otherwise unreasonable;
d) how to get further advice about legal fees.

Recommendation 4.7

A legal practitioner should be required to provide a copy of the check list to a client at the point of engagement and at the final disposition of the matter.

Recommendation 5.1

Return to work and rehabilitation should be a primary object of the Act.

Recommendation 5.2

There should as soon as possible be stronger enforcement of:

a) the period within which a notice of claim is given under s.133 of the Act;
b) an employer's obligations as to an injured worker's return to work and rehabilitation;
c) a worker's obligations as to return to work and rehabilitation.

Recommendation 5.3

Additional enforcement powers should be provided under the Act in relation to return to work and rehabilitation obligations, including, where compliance cannot be achieved otherwise, powers to give enforceable directions to employers.

Recommendation 5.4

By 31 December 2010, WorkCover and Q-COMP should develop their respective return to work and rehabilitation policies and programs in consultation with each other to make them complementary and to facilitate better understanding of the potential demand for rehabilitation and return to work services when claimants cease to be within the scope of WorkCover's programs. Such policies and programs should be reviewed in consultation at least annually.

Recommendation 5.5

Q-COMP should at least annually, in consultation with WorkCover and self-insurers, review and revise its best practice guidance for any person with return to work and rehabilitation obligations or needs under the workers' compensation system. This might, for example, relate to the conduct of employers, claimants, legal representatives and medical and related professionals advising claimants or insurers. Such guidance should take account of any relevant minimum advisory standard made by Q-COMP.

Recommendation 5.6

Q-COMP should at least annually examine the effectiveness of rehabilitation and return to work coordinators and whether further training and support by Q-COMP should be provided to them.

Recommendation 5.7

No later than 30 June 2011, WHSQ, Q-COMP and WorkCover should develop mechanisms to encourage the more effective use of workplace health and safety officers and rehabilitation and return to work coordinators up to and after the introduction of the model *Work Health and Safety Act* in 2012, including by:

a) promoting the value of workplace health and safety officers and rehabilitation and return to work coordinators to employers in securing better prevention of work-related harm as well as better return to work and rehabilitation outcomes;
b) supporting training that recognises and strengthens the complementary roles of workplace health and safety officers and rehabilitation and return to work coordinators;
c) making relevant information and advice readily available to workplace health and safety officers and rehabilitation and return to work coordinators;
d) monitoring the use and effectiveness of workplace health and safety officers and rehabilitation and return to work coordinators to improve the support available to them.

Recommendation 5.8

Consideration should be given to authorising a suitably trained health and safety representative to be entitled to perform functions that facilitate the return to work and rehabilitation of an injured worker to a workplace (as part of the implementation of the model *Work Health and Safety Act*).

Recommendation 5.9

The Act provisions (Part 6) relating to the reinstatement of an injured worker should be strengthened by allowing the Industrial Relations Commission:

a) where reinstatement to the worker's original position is impractical, to order the worker's employment in another position that the employer has available that the IRC considers suitable;
b) to make any other order that appears necessary to the Commission for ensuring that the reinstatement is fair and effective, including an interim order.