President: **John Battams**General Secretary: **Ron Monaghan**Assistant General Secretary: **Amanda Richards****E-MAILED**
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24 August 2012

The Research Director
Finance and Administration Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Sir /Madam

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

Please find attached the Queensland Council of Unions submission to the Inquiry submitted on behalf of our Affiliates. This submission was developed in consultation with Affiliates and was unanimously endorsed by our Executive on Wednesday 21 August 2012.

The Queensland Council of Unions has 32 affiliated unions representing over 350 000 workers in Queensland.

Should you wish to discuss our submission further please do not hesitate to contact me. Also should there be public hearings the Queensland Council of Unions would wish to present to Committee.

Yours sincerely

Amanda Richards

Assistant General Secretary

Response to Workers' Compensation Inquiry

Queensland Council of
Unions

Prepared by:
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Executive Summary

- The current Queensland Workers' Compensation Scheme provides adequate benefits for injured workers.
- 64% of workers' compensation claims are finalised in less than 4 weeks with 84% between 4 – 13 weeks.
- Queensland has one of the best systems for workers diagnosed with a latent onset or asbestos related disease.
- The learnings from the WHSQ's IPAM program are transferrable to the broader business community.
- Any reduction in benefits would have a detrimental affect on the community.
- According to 2009/10 data 11.2% (of employers 19 015 out of 150 000 policy holders) made a claim on their workers' compensation policy.
- The current funding ratio is estimated at 117%.
- Journey claims are 6% of all statutory claims; fatigue associated with work has a large impact on these claims. Journey claims to and from work do not impact on an employer's premium.
- The 2010 amendments to the scheme have decreased the total cost of claims by 2.1% with common law claims decreasing by 9.6% in 2010/11.
- Anecdotal reports indicate that some businesses in the construction industry are not paying their full premiums.
- The average decision making time for workers compensation claim is on average 6.2 days.
- Queensland's definition of injury is nationally consistent, in particular that relating to psychological injury.
- Queensland is reporting a return to work rate of 98.5%.
- Queensland resolves 83% of disputes within three months.
- Less than 5% of claims go to common law.
- In 2008/09 it was estimated that only 5% of the cost of workplace injury was borne by employers, 74% by workers and 21% by the community.
- In 2005/06 the dollar amount of workplace injuries and illness was estimated at 5.9% of Australia's GDP.
- Queensland is the third largest workers' compensation scheme in Australia.
- Queensland employers pay the second lowest premium rate out of all the states at \$1.42.
- The accounting method of recording deferred tax methods to project profit is a commonly used method and is approved by the Australian Accounting Standards Board.
- The scheme since 1997 has not had an adverse affect on the Queensland economy.
- In 2011 WorkCover Queensland had an employer customer satisfaction rate of 74% and a worker customer satisfaction rate of 84%.

Introduction

The Queensland Council of Unions (QCU) works with 34 Queensland Unions who represent over 350 000 workers in Queensland to advance the industrial, political and social standing of their members in society.

This submission has been prepared through consultation with QCU affiliated unions.

Workers' Compensation legislation in Queensland dates back to 1886, to the Employers Liability Act of 1886. The first workers' compensation legislation was introduced in Queensland was known as the *Workers' Compensation Act 1905*¹. The aim of the legislation was to act as a preventative and compensatory function². Formal obligations were placed on the employer so that the employer would maintain a safe work place. The act also aimed to provide financial security for injured workers³.

Workers and their unions have been lobbying for maintenance or improvements to the legislation ever since.

In 2008/09 at the time of the previous review, the Queensland Government was advised that the Workers' Compensation Scheme was operating at a deficit of \$567 million⁴. Actuarial reports at the time stated that this was due to:

- Growth in net claims expenditure incorporating a disproportionate increase in common law claim payments and volume in comparison to the growth of statutory claim payments and volume.
- Income not keeping pace with net claims growth – premiums have been kept at an average of approximately \$1.15 per \$100 of wages.
- The substantial, consecutive negative returns from the investment portfolio as a result of the global financial crisis.⁵

Following extensive discussions with key Stakeholders a number of legislative amendments were made introducing concepts of the Civil Liabilities Table of Injuries into the workers' compensation areas as a means of curtailing the increasing numbers and cost of common law claims. A further review of institutional arrangements relating to workers' compensation was carried out by Robin Stewart-Compton. His report made a number of recommendations that went to the Queensland government. Recommendations other than legislative amendments have in the main been implemented.

¹ Cowan, P. (1997) From Exploitation to Innovation: The Development of Workers' Compensation Legislation in Queensland, Labour History No 73 pp93-104

² Ibid

³ Ibid

⁴ Queensland Parliament. (2009). *Statement to the Queensland Parliament by the Attorney-General and Minister for Industrial Relations Cameron Dick, November, 2009*. Brisbane: Queensland Parliament

⁵ Queensland. Department of Justice and Attorney-General. (2010). *Discussion Paper: the Queensland workers' compensation scheme: ensuring sustainability and fairness*. Brisbane: Queensland Government.

The above changes were to be reviewed in November of 2012. Furthermore, the Workers' Compensation and Rehabilitation Act 2003 (the Act) under Section 584 A ⁶ requires that the relevant Minister review the legislation every 5 years, with the first review to be completed no later than 30 June 2013. This review has now been scheduled and referred to the Finance and Administration Committee to report on the operation of the Queensland Workers' Compensation Scheme.

It is our position that the Queensland Workers' Compensation Scheme is a viable and fully funded scheme that supports employers and employees. This is on the basis that Queensland has one of the lowest contribution rates of all states, and has adequately compensated injured workers whilst maintaining unfettered access to common law.

The performance of the Scheme in meeting its objectives under section 5 of the Act

Section 5 of the Workers' Compensation and Rehabilitation Act 2003

- (1) This Act establishes a worker's compensation scheme for Queensland –**
- (a) Providing benefits for workers who sustain injury in their employment, for dependants if a worker's injury results in the worker's death, for persons other than workers, and for other benefits; and
 - (b) Encouraging improved health and safety performance by employers.

Benefits

The QCU believes the Workers' Compensation Scheme provides adequate benefits for workers.

Duration of finalised statutory lost time claims⁷

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

This table demonstrates that the majority of injured workers return to work in less than 4 weeks. This early return to work rate benefits employers by reducing the economic impact of lost productivity. Access to weekly benefits, medical treatment and rehabilitation provides for an early return to work for the injured worker thus reducing the economic impact on the injured worker,

⁶ Workers Compensation and Rehabilitation Act 2003 Section 584A

⁷ Department of Justice and Attorney-General(2012); Work Cover Queensland Information Paper, Inquiry into the operation of Queensland's workers' compensation scheme. Brisbane ; QComp

their family and the broader community. Those with more serious injuries or illnesses are still able to receive continued compensation and rehabilitation until they are able return to work or their condition stabilises.

Furthermore Queensland has one of the best systems for those workers who are unfortunate enough to be diagnosed with an asbestos related disease or latent onset disease allowing for ill workers to receive benefits when they are needed most.

Dependants

Currently, the WCRA provides fatal injury benefits to dependants in the event of a workers fatality in the course of their employment. Fatal injury benefits are also available if the worker dies whilst travelling to and from work (" the Journey Claim").

It is important to maintain access for dependants of fatal injury benefits compensation in the event that the worker is fatally injured in an accident to or from work.

As mentioned throughout this submission many of Queensland's workers have "drive in/out" or "fly in/out" conditions attached to their employment. Fatigue presents a significant risk to workers particularly during their journey to and from work. Fatigue significantly increases the risk or occurrence of single vehicle accidents. In a single vehicle accident which results in the death of a worker whilst travelling to or from work, fatal injury benefits under the workers' compensation scheme are the only benefits available to the dependants.

To explain, Compulsory Third Party compensation under the Motor Accident Insurance Act (MAIA) claimed by dependants or injured workers is only available if the deceased or injured worker was not at fault for the motor vehicle accident. This is a particularly important consideration in the event of a single vehicle accident where fatigue is a causative factor for the accident. Compulsory third party claims are usually not successful in the single vehicle accident scenario.

A further consideration in relation to the journey claim, particularly where the MAIA applies is that there is ability for the workers' compensation insurer to recoup those benefits paid by them in a journey claim from the compulsory third party insurer. The QCU can not glean from the information and various statistics released to date an analysis of the costs incurred by the scheme for journey claims involving motor vehicle accidents and what is actually later recovered as a result of a successful claim under the MAIA by the injured worker or, in the event of a fatality, the dependants.

Improved Health and Safety

Improved health and safety in the workplace is a fundamental principle shared by all parties. It is demonstrable that improvements in health and safety in the workplace does lead to fewer injuries. To this degree it should be a fundamental number one objective of the government to assist workplaces improve their health and safety performance thereby decreasing the impact on the workers' compensation system. To this degree the QCU has been a big supporter of the Injury Prevention and Management (IPAM) program.⁸

⁸Ibid

There is quantifiable evidence that this program has had a significant impact on the performance of those businesses that are participating in the program. Anecdotally we are advised that other businesses that are hearing of the program have also been contacting WHSQ to see if they can participate as well.

It is also our belief that the learnings from this program are transferrable to the broader business community. The QCU would therefore recommend the ongoing funding of this program.

Monies from insurers are collected and go towards funding the activities of WHSQ which focus on achieving the National Strategy injury and fatality targets, compliance audits, along with targeted policy work on Industries which are showing above the norm injury rates e.g. Manufacturing and Transport. The Union movement supports the activities of WHSQ and believe there is currently a balanced approach between proactive assistance to business and enforcement activities.

Currently there are approximately 150 000 premium paying employers in Queensland and according to 2009-10 data 19, 015 employers or 11.2% had a claim on their policy that year⁹. To reduce this figure further, continuing the IPAM project would further assist in improving workplace health and safety and therefore decrease the number of claims under workers' compensation. It is the belief of the QCU that with some work done on segmentation of these businesses and utilising the learnings from IPAM it would be a beneficial and worthwhile activity to work with each of these businesses should they be willing to assist them improve their safety and therefore decrease their claims under workers' compensation.

The QCU has also been made aware of a program that WorkCover Queensland is running whereby they "relationship manage" 10 000 employers who have three or more statutory claims in a year or a common law claim. Should WorkCover and WHSQ work together combining this program with IPAM, the personal and financial benefits would be good for everyone.

Recommendation 1.

The QCU recommends that the number one focus of government should be to assist workplaces improve their health and safety performance.

Recommendation 2.

The QCU recommends that an assessment of the businesses making claims on their workers' compensation policies be undertaken in order that they be segmented and targeted interventions be put in place utilising the principles of WHSQ's IPAM program.

⁹ Ibid

(2) The main provisions of the scheme provide the following for injuries sustained by workers in their employment –

- (a) compensation;
- (b) regulation of access to damages;
- (c) employers' liability for compensation;
- (d) employers' obligation to be covered against liability for compensation and damages either under a WorkCover insurance policy or under a licence as a self-insurer;
- (e) management of compensation claims by insurers;
- (f) injury management, emphasising rehabilitation of workers particularly for return to work;
- (g) procedures for assessment of injuries by appropriately qualified persons or by independent medical assessment tribunals;
- (h) rights of review of, and appeal against, decisions made under this Act.

Compensation

As indicated previously in our response the QCU believes that the current compensation and benefits are adequate. Any reduction in compensation or benefits would have a detrimental effect on the Queensland economy as the costs would be borne by the community. As a consequence the strain would be placed on the public hospital system. The current Workers' Compensation Scheme ensures that the costs on the economy are minimised and that injured workers can contribute and participate in the community.

It is important to note that the Queensland scheme covers journey claims – these claims are only 6% of all statutory claims and have “been stable for the past 10 years”¹⁰. This equates to 12% of statutory payments.¹¹ It is important to note that journey claims in Queensland often have a significant amount of work-relatedness associated with fatigue due to the distances some workers are required to drive, the conditions they are required to drive in, and the times of the day they are required to drive at. Journey claims for travel to and from work impact on the broader scheme but do not impact on an employer's experiential rating.

Access to Damages

Queensland workers still have unfettered access to common law should they sustain a compensable work-related injury or illness. Injured workers with work-related impairment (WRI) of less than 20% must make an irrevocable choice between a lump sum payment or taking a damages claim¹². Queensland is the only state to maintain this, and it is an integral part of our short tail system.¹³

The amendments made to the legislation in 2010 have decreased the total cost of claims by 2.1 per cent or 1.256 billion in the period of 2010-2011.¹⁴ The amount of statutory claims in 2010-2011

¹⁰ Ibid

¹¹ Ibid

¹² Workers Compensation and Rehabilitation Act 2003 Section 240 2A

¹³ Safe Work Australia. (2011). *Comparison of workers' compensation arrangements in Australia and New Zealand*. Canberra: AGPS.

¹⁴ Q Comp. (2012). 10/11 Statistics Report United behind the values we share. Queensland: Q comp

have increased by 3.5 per cent, this is attributed to the increase in Queensland's workforce.¹⁵ Common law claims have decreased by 9.6 per cent in 2010-2011.¹⁶ The change in legislation in 2010 and the implementation of the return to work programs have led to a marked change in behaviours/attitudes in such a short period of time.¹⁷ Taking into consideration the time frame for an injured worker making a claim for damages is three years.

Anecdotal reports from plaintiff lawyers advise that as foreseen there are a number of injured workers who would have had a claim under the previous legislation, do not proceed with common law claims as it is not financially viable for them to do so. Unfortunately these injured workers emanate from lower paid employment.

The QCU does not see any need for further punitive changes in this area as costs and numbers are currently stable. We would encourage regular reports to stakeholders on the ongoing status of the scheme in order that any risks to the scheme from this area can be identified at an early stage.

We would also note that under the Act, a worker must mitigate their loss¹⁸.

Employers Liability for Damages

An employer's liability for damages is applicable when the injury or illness is attributable to an employer's negligence.¹⁹ As mentioned above a worker must take certain steps to mitigate their losses. This is part of the employer's insurance cover and is historically how the workers' compensation system came about.

Employers liability for workers' compensation insurance

All employers in Queensland who employ workers as defined under the Workers' Compensation and Rehabilitation Act are required to hold an insurance policy.²⁰ It is our experience that there is a high level of compliance within industry other than the construction industry. The Construction, Forestry Mining and Energy Union, Construction and General Division advise anecdotally that they contact WorkCover at least twice a week to check whether an employer has a policy in place and whether the premium reflects the actual number of workers employed on site on a daily basis. In the main they advise the majority of these employers are not paying the correct premium.

As a follow up to the previous changes to the legislation a significant amount of work was undertaken with the construction industry which looked at making the principal contractor responsible for ensuring that all on site were covered by a policy, and that the site was covered by a single policy ensuring that there was accountability at a high level for health and safety on site. Unfortunately this work was not completed.

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Safe Work Australia. (2011). *Comparison of workers' compensation arrangements in Australia and New Zealand*. Canberra: AGPS.

¹⁸ Queensland. Department of Justice and Attorney-General. (2010). *Discussion Paper: the Queensland workers' compensation scheme: ensuring sustainability and fairness*. Brisbane: Qld Govt.

¹⁹ Workers Compensation and Rehabilitation Act 2003 Section 321A

²⁰ Workers Compensation and Rehabilitation Act 2003 Section 5 2A

Recommendation 3

The QCU recommends that the work commenced on improving workers' compensation compliance, performance and rehabilitation in the construction industry be reviewed and recommenced.

Management of compensation claims by Insurers

Queensland has the best funding ratio of all the schemes across Australia and is a centrally funded scheme. The current funding ratio is estimated at 117%²¹. The average premium rate by employers continues to be one of the lowest across Australia.²²

The scheme processes approximately 100 000 applications for compensation per year. The average decision making time is approximately 6.2 days on average.

WorkCover is constantly reviewing their processes to ensure that they meet the needs of both employers and injured workers whilst keeping costs and administrative processes down to a minimum. Opportunities to raise issues with WorkCover are regularly made available as well as ad hoc approaches on specifics are encouraged.

The QCU receives very few complaints in relation to WorkCover's processes. The largest area of concern is in relation to psychological claims, however the QCU recognises that the definition of an injury under the Act is nationally consistent.

The management of compensation claims has been streamlined over the years and has been receptive to the needs of employers with WorkCover now having an industry approach to their claims management. Self-insurers have standards to meet and are audited by Q-COMP on a regular basis and in the main continue to work within their required standards.

Affiliates have raised issues in relation to self-insurer's claims management; these matters will be highlighted in individual union submissions. One of the key issues raised by our affiliates is the perception of a lack of divide between the insurer and the human resources area and/or management of the business. This continues to be a major concern and impedes rehabilitation as injured workers will not be free with information if it is to be used against them at a later date.

Furthermore where there is a licence for a group employer the insurer must be able to ensure compliance with the Act for all the employers involved with the licence, otherwise the licence can be put at risk due to the behaviours of one employer.

Whilst the union movement in general does not support self-insurance it is our view that the system in place adequately covers injured workers and those businesses who chose to and are eligible to self-insure.

²¹ Department of Justice and Attorney-General(2012); Work Cover Queensland Information Paper, Inquiry into the operation of Queensland's workers' compensation scheme. Brisbane ; QComp,

²² Safe Work Australia. (2011). *Comparison of workers' compensation arrangements in Australia and New Zealand*. Canberra: AGPS.

Recommendation 4.

The QCU recommends that measures are put in place to review compliance of self-insurers in keeping a separation of workers' compensation information held by the insurer from the employment area of the business

Recommendation 5.

The QCU recommends that self-insurance licences held by "group employers" have the obligation for the insurer to monitor the compliance of the employers with the Act on an ongoing basis, and should a breach be discovered the capacity to intervene should the breach pose a risk to the licence

Injury management and rehabilitation

Whilst there are at times individuals who have disagreements with their insurer over their injury management, considering the numbers of injured workers, the disputation rate is minimal. Decision making related to medical or rehabilitation needs must be undertaken in a timely way.

There is still a short fall for those workers who are unable to return to their previous job, particularly those employers who are unable to, or unwilling to assist with the return to work (RTW) programs for injured workers. In saying that we believe that the legislative changes put in place following the previous review have made a huge impact on RTW rates particularly the work of Q-COMP's Return to Work Assist Program. Queensland has gone from a 93.7 %(2010/11) RTW rate to a RTW in 2011/12 of 98.5%²³. As indicated previously we believe that RTW programs could be taken further particularly for those injured workers unable to return to their job.

Recommendation 6.

The QCU recommends that the Return to Work Assist Program continue with a sustainable money source established to assist with the costs of preparing people to return to work.

Assessment of Injuries

This matter is currently under review at a national level where the DSMV is being reviewed by the Workers' Compensation SIG at a national level, in order that it can be implemented across all states, territories and the commonwealth. The union movement is awaiting further detailed information as to the potential impacts to workers should Queensland adopt the DSMV.

Furthermore if there is any disputation in relation to an injured worker's illness or injury the matter is referred to the Medical Assessment Tribunal for a determination. This process is a fair and equitable process and whilst injured workers do not necessarily understand the complexities of their injury or illness, or agree with the outcome of the Tribunal, all workers are treated the same.

Dispute Resolution

Queensland's disputes system is an integral part of the short tail scheme, decisions need to be made in a timely way which is evidenced by the following report.

²³ Department of Justice and Attorney-General(2012); Work Cover Queensland Information Paper, Inquiry into the operation of Queensland's workers' compensation scheme. Brisbane ; QComp,

“On average half the disputes were resolved within three months from the date of lodgement, with Queensland resolving the highest proportion of disputes (83%) within that time.”²⁴

- (3) There is some scope for the application of this Act to injuries sustained by persons other than workers, for example –**
- (a) under arrangements for specified benefits for specified persons or treatment of specified persons in some respects as workers; and
 - (b) under procedures for assessment of injuries under other Acts by medical assessment tribunals established under this Act.

The QCU believes that the current legislation in this area is adequate.

- (4) It is intended that the scheme should –**
- (a) Maintain a balance between –
 - (i) providing fair and appropriate benefits for injured workers or dependants and persons other than workers; and
 - (ii) ensuring reasonable cost levels for employers; and
 - (b) ensure that injured workers or dependants are treated fairly by insurers; and
 - (c) provide for the protection of employers’ interests in relation to claims for damages for workers’ injuries; and
 - (d) provide for employers and injured workers to participate in effective return to work programs; and
 - (da) provide for workers or prospective workers not to be prejudiced in employment because they have sustained injury to which this Act or a former Act applies; and
 - (e) provide for flexible insurance arrangements suited to the particular needs of industry.

Injured Workers and Employers - balance

The QCU position is that the benefits for injured workers currently are adequate, and the premiums for employers are equitable being one of the lowest premiums in Australia.

The QCU believes that the legislative framework ensures the fair and equitable treatment for not only injured workers and prospective workers, but employers as well.

Fair Treatment

The QCU believes that the current disputes resolution framework is easily able to be utilised by injured workers and/or their employer if aggrieved by any decision of the insurer.

Employer Protections

Should an employer have a number of injured workers or a common law claim in a year which impacts on their premium rate, their premiums are capped at double the industry rate. This, for some employers with a continual poor performance, had become a safeguard and there was no incentive for them to improve health and safety on site.

²⁴ Workplace Relations Ministers Council(2010); Comparative Performance Monitoring Report, comparison of work health and safety and workers compensation schemes in Australia and New Zealand. Canberra ;Safe Work Australia,

In the most recent changes to the legislation the WorkCover Board has the ability to lift this cap should an employer show no intent to improve health and safety and/or rehabilitation in their workplace. Since the changes the majority of employers have volunteered to participate in programs to improve their claims history. The interventions have proved to have a significant impact on the business with noticeable improvements reported after only a few months.

Recommendation 7

The QCU recommends that the WorkCover Queensland intervention program aimed at capped employers continue.

There are also protections and safeguards in the Act for employers when a worker is seeking damages for an injury. Under the Act when a common law claim is pursued there is a responsibility for the worker to mitigate their loss.²⁵ In order to mitigate their loss an injured worker can discharge this duty by participating in rehabilitation or a return to work program.²⁶ There are further limitations when seeking a common law claim. In the situation where a worker has a work related injury of less than 20%, there must be a choice of a lump sum payment from WorkCover or damages²⁷.

At the time of the last review there was a lot of discussion around the management of common law claims and the role that the actual employer can play, along with their expectations around communication in relation to damages claims. Subsequently WorkCover held a number of stakeholder sessions with a view to improving their processes.

There continues to be a lot of discussion amongst industry in regards to the impact of damages claims on business. As indicated previously only 11.2% of policy holders have claims and less than 5% of claims progress to common law²⁸.

Recommendation 8

The QCU recommends that the stakeholder sessions held by WorkCover Queensland continue on a regular basis.

Effective Return to Work Programs

The current legislative framework provides well for those who are able to return to work in their previous position following their injury, it does not extend far enough to assist those who are unable to return to work in their previous role and need to be retrained in a new occupation. It is the experience of the union movement that some employers are unwilling to assist in this regard, we therefore believe that WorkCover should utilise its powers under the Act to enforce compliance by employers to supply return to work programs for injured workers.

²⁵ Workers Compensation and Rehabilitation Act 2003 Section 231

²⁶ Ibid

²⁷ Workers Compensation and Rehabilitation Act 2003 Section 239

²⁸ Department of Justice and Attorney-General(2012); Work Cover Queensland Information Paper, Inquiry into the operation of Queensland's workers' compensation scheme. Brisbane ; QComp,

Whilst Return to Work Assist does aid injured workers in this area, the programs in place rely on funding from various agencies and funding from Q-COMP to assist with payment for equipment licences etc. A sustainable funding source is needed to continue this program and assist injured workers. It is a proven fact that injured workers who return to work are less likely to take a common law claim for damages.

Recommendation 9

The QCU recommends that WorkCover utilises its authority under the Act to enforce compliance by employers to supply return to work programs for injured workers.

Protections

The protections for employees under the Act who have returned to work consist of providing a definition for what constitutes dismissal of a worker. Dismissing an injured worker includes a situation where an unreasonable employment condition is designed to make the worker leave employment, which is imposed on the worker and the worker leaves employment.²⁹ The Act further elaborates that twelve months after a worker sustains an injury the employer must not dismiss the worker solely or mainly because the worker is not fit for employment because of that injury.³⁰ If the worker is dismissed the Act states that an employee may apply for reinstatement with the requirement that a medical certificate is provided to the employer stating the employee is fit for work.³¹

The *Anti Discrimination Act 1991* also provides additional protection to a worker who was previously injured and is suffering impairment.³² These protections cover both new employment and current employment. A person with an impairment must not be discriminated against in the pre-work area which includes being offered work or in their terms of work e.g. when work will commence or cease.³³ The *Anti Discrimination Act 1991* also covers discrimination in the workplace, which consist of denying or limiting access to opportunities for promotion, transfer, training or dismissing the worker because of their impairment.³⁴

- (5) Because it is in the State's interests that industry remain locally, nationally and internationally competitive, it is intended that compulsory insurance against injury in employment should not impose too heavy a burden on employers and the community.

²⁹ Workers Compensation and Rehabilitation Act 2003 Section 232A

³⁰ Workers Compensation and Rehabilitation Act 2003 Section 232B

³¹ Workers Compensation and Rehabilitation Act 2003 Section 232D

³² Anti-Discrimination Act 1991 QLD section 7h

³³ Anti-Discrimination Act 1991 QLD section 14

³⁴ Anti-Discrimination Act 1991 QLD section 15

Despite common perceptions, the community and workers are most likely to be affected by a workplace injury.³⁵ In the terms of economic burdens in 2008-2009 Safe Work Australia estimated that 5% of the total cost of workplace injuries is borne by employers, 74% by workers and 21% by the community.³⁶ The costs employers incur are usually associated with the loss of productivity from absent workers, recruitment costs, retraining costs, fines and penalties from breaches of workplace health and safety regulations.³⁷ Cost for employees can be broken down into non compensated medical expenses, the loss of current and future income.³⁸ The costs which the community will incur include social welfare payments, medical scheme costs, loss of potential output and revenue.³⁹ The burden of cost has changed considerably since 2001 figures, due to a growth in average weekly earnings for employees.⁴⁰

The dollar amount of workplace injuries and illness was estimated to cost 57.5 billion in 2005-2006, which represented 5.9% of Australia's GDP.⁴¹ The Australian Government Department of Family and Community Services estimated that the Australian Government paid \$180 million dollars in social community payments to people affected by workers' compensation payments.⁴² In Queensland alone the combined cost of injury and disease was attributed to cost \$13,900 million during the period of 2008-2009.⁴³

When a workplace injury is suffered it is not just in monetary terms that a worker suffers. Issues such as loss of income, trauma, effects to the workers family or the loss of ability affect injured workers. In order to understand how many people these issues affect, statistics of those injured in the workplace offer an indication. During the period of 2009-2010 111 workers died as a result of accidents in the workplace.⁴⁴ During the six month period between January to June 2011 there were 17 workplace deaths in Queensland.

In the period of 2009-2010 the work-related injury rate was 53 injuries per 1,000 people employed.⁴⁵ This was a decrease from 64 people per 1,000 people employed in 2008-2009. This reduction was because of a decrease of males having workplace accidents.⁴⁶ During the same period Queensland experienced 13.6 non fatal injuries per 1,000 workers and 27 serious injuries, this was a decrease from last year's figures.⁴⁷ Both the state and national statistics represent an intangible cost in the loss of human capital.

³⁵ Safe Work Australia, (2012) The cost of work-related injury and illness for Australian employers, workers and the community:2008-2009, Canberra, Safe Work Australia

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

⁴² Productivity Commission. (2004). National Workers' Compensation and Occupational Health and Safety Frameworks: Inquiry No.27. Canberra: AGPS

⁴³ Ibid

⁴⁴ Safe Work Australia,(2011) Notified Fatalities Statistical Report 2009-2010, Canberra, Safe Work Australia

⁴⁵ Queensland Government, (2012) Queensland work health and safety performance, Queensland, Department of Employment and Industrial Relations

⁴⁶ Ibid

⁴⁷ Ibid

Currently there is a rise in the number of fatalities associated mesothelioma, in 2007 there were 551 deaths compared with 486 deaths in the previous year.⁴⁸ These figures are not estimated to reach their peak until 2043.⁴⁹ With the latent onset of diseases contracted in the workplace such as mesothelioma it is likely that both the monetary and non monetary effects will continue to increase.

From the statistics it is evident there are a number of factors associated with the cost of a workplace injury. There are a number of intangible costs which a worker cannot be compensated for. The current WorkCover scheme is important in order to mitigate and rehabilitate those who are injured in the workplace or those who are affected by a workplace injury.

How the Queensland workers' compensation scheme compares to the scheme arrangements in other Australian jurisdictions

To gain an understanding of the viability of the Queensland scheme comparisons need to be drawn against the other schemes which are in operation in Australia. The size of the Queensland scheme covers 1 857 900 people making it the third largest scheme in operation.⁵⁰ In comparison New South Wales covered 3 008 600 in the same period. The smallest scheme was the Commonwealth scheme which covered 362 300 people.⁵¹

The funding ratio of any scheme is important because inferences can be made about the financial health and viability of the scheme. During 2008-2009 Queensland was operating at a funding ratio of 146% which was the highest throughout all jurisdictions. Western Australia which was operating at a rate of 128% and South Australia operating far below 100% at the rate of 56%⁵².

The rate which employers have to pay premiums for insurance under the scheme can affect the viability of an employer's business. The nature of Queensland's legislation has been historically based on low premiums for employers.⁵³ In July 2011 Queensland premiums were at \$1.42 per \$100⁵⁴. In contrast in that same period South Australia's premiums were at \$2.75 per \$100.⁵⁵ Even though numerous amendments have been made to the South Australian legislation the scheme is still not at its aspirational rate of \$2.25 per \$100⁵⁶. Currently the Queensland schemes premiums have adjusted slightly to \$1.45 per \$100⁵⁷, which is better than New South Wales which is at a rate

⁴⁸ Safe Work Australia, (2011) Key Work Health and Safety Statistics, Canberra, Safe Work Australia

⁴⁹ Ibid

⁵⁰ Safe Work Australia. (2011). *Comparison of workers' compensation arrangements in Australia and New Zealand*. Canberra: AGPS.

⁵¹ Ibid

⁵² Ibid

⁵³ Purse, K. (2012). *Submission to the Joint Parliamentary Select Committee: submission on the NSW workers' compensation scheme*. Sydney: Unions NSW.

⁵⁴ WorkCover Queensland: Premium rates for 2011-2012 (2011), viewed at 31 July 2012, <<http://www.workcoverqld.com.au/news/2011/premium-rates-for-2011-2012-media-release>>

⁵⁵ Ibid

⁵⁶ Purse, K. (2012). *Submission to the Joint Parliamentary Select Committee: submission on the NSW workers' compensation scheme*. Sydney: Unions NSW.

⁵⁷ Queensland Government, (2012) Queensland Commission of Audit, Brisbane, Queensland Government

of \$1.66 per \$100.⁵⁸ New South Wales, like South Australia, have made numerous amendments to their legislation and still have not had a decrease in their premiums.⁵⁹ When comparing other jurisdictions it is evident that Queensland has one of the lowest premiums which attest to the viability of the scheme already in place. This clearly shows that amending legislation will not necessarily decrease the price of premiums.

As previously mentioned in this submission Queensland has low rates of disputation.⁶⁰ The Northern Territory had a slightly higher rate of 4.8%.⁶¹ During the same period of 2005-2006 Victoria's disputation rate was the highest at 14.1% closely followed by South Australia at 11.7%.⁶² The rates for Queensland are the lowest when compared with other schemes which attest to the fact that the scheme is adequately meeting the needs of stakeholders and that there is a fair understanding of the rules of the scheme⁶³.

Currently Queensland operates under a short tail scheme, whilst other schemes operate under a long tail scheme⁶⁴. Long tail schemes attempt to deal with the ongoing long term costs for workers whilst restricting workers from making common law claims. These schemes usually need more resources as opposed to the short-tail schemes. States such as the Northern Territory and South Australia utilise the long tail scheme. Their schemes have been criticised for being expensive and cumbersome.⁶⁵ Other schemes such as NSW, Victoria, Tasmania and Western Australia provide limited access to common law. In Queensland the short tail scheme is successful because it reduces the cost for the scheme and allows workers the access to a lump sum.⁶⁶

In the 2004 Productivity Commission Inquiry into National Workers' Compensation, Australian Meat Holdings stated:

"Employers who currently operate in Queensland would be drastically disadvantaged if they had to operate under a scheme that was more like any other jurisdictions. This is because in our view as a national based Queensland based business that this scheme is the most economically viable".

It is evident from the comparison drawn between the other schemes that Queensland's scheme is a system which operates sufficiently at this period in time for both employers and injured employees. It needs to be taken into consideration that the scheme in Queensland has the third largest coverage of people, operates the lowest premiums, has the highest funding ratio, highest return to work rate and lowest disputation rate in comparison to other schemes. As witnessed in other schemes the amending of legislation will not constitute a decrease in operation costs or costs to employers.

⁵⁸ Work Cover NSW, Media Release WorkCover premiums unchanged following reforms (2012), viewed at 31 July 2012, <<http://www.workcover.nsw.gov.au/aboutus/newsroom/Pages/WorkCoverpremiumsunchangedfollowingreforms.aspx>>

⁵⁹ Ibid

⁶⁰ Bowman, D. M., Adams, M., Lowdon, K., Grant, G., & Studdert, D. M. (2011). *Rehabilitation and compensation for injured workers: a review of the Australian schemes*. Melbourne: University of Melbourne

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid

⁶⁴ Ibid

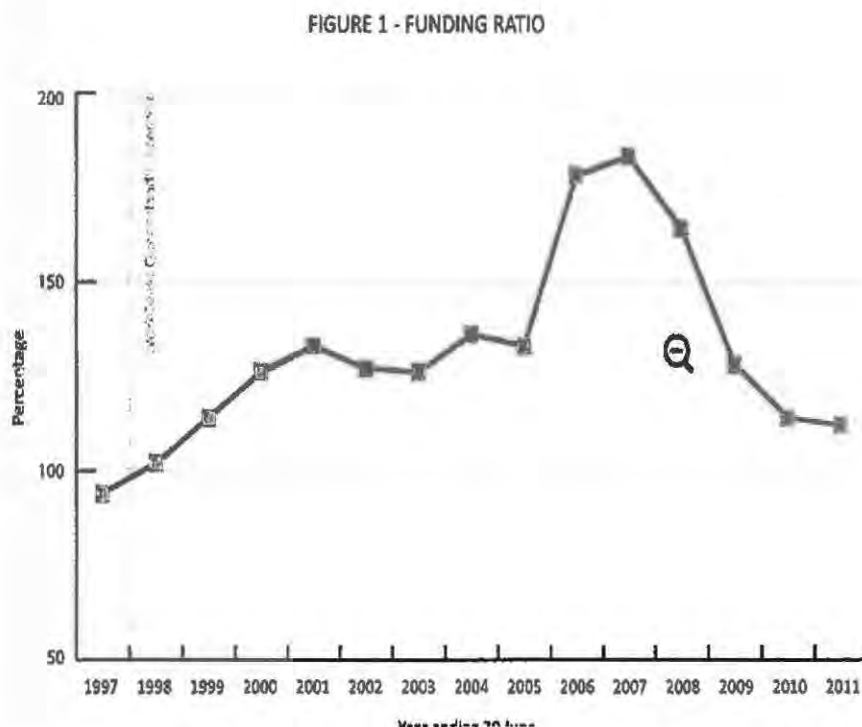
⁶⁵ Ibid

⁶⁶ Ibid

WorkCover's current and future financial position and its impact on the Queensland economy, the State's competitiveness and employment growth

WorkCover Queensland was established as a government owned statutory authority following a number of reforms in 1997.⁶⁷ WorkCover operates as a not for profit enterprise with the aim of turning a profit not being within the scope of the organisation. To ensure WorkCover's viability and efficiency financial concepts such as budgeting, strategy formulation, corporate planning and performance management are utilised.⁶⁸

**Figure 1: WorkCover
Funding Ratio**



The graph (figure 1) above further attests to the fact that the scheme is efficiently managed and the financial concepts WorkCover utilise have led to the scheme being fully funded for its entirety.⁶⁹ WorkCover is a financially robust scheme, considering WorkCover was still able to maintain fully funded during the global financial crisis and Queensland floods.

On discussions with Mr Tony Hawkins from WorkCover *"Continued solvency is dependent on a number of factors being claims costs and trends, actuarial provisioning, investment returns and the overall premium rates."*

Provided that the claims trends that we have been experiencing in the last couple of years since the legislative changes are sustained, we are reasonably confident that the current premium rate can be

⁶⁷ WorkCover Queensland, (2012) Caring For Queensland Employers and Workers, A 15 Year Journey, Brisbane, WorkCover

⁶⁸ Ibid

⁶⁹ Ibid

maintained moving forward. Commensurately, it could then be reasonably expected (provided investment returns achieve budgeted projections) that the solvency would be similarly maintained."

It is worth noting that the financial position of WorkCover is mentioned in the Queensland Commission of Audit –Interim report.⁷⁰ The case of *Cameron v Foster*⁷¹ was included in the report for its concern that the decision handed down on appeal would lead to increased costs for WorkCover. The concern arises from the fact that Cameron was compensated because he was unable to mow his lawn and could not rely on the gratuitous service of his family. As a result Cameron at times would engage a private company to do his lawns. The rationale for being awarded costs was that the gratuitous service was not reliable. There was a significant amount of worry that this case would increase overall costs of the scheme in the future, however no significant outbreak in costs has occurred. From further research the principles established in this case have not been used extensively in other cases.

The interim report reviews WorkCover's capital adequacy being at the rate of 120% with the inclusion of deferred tax assets.⁷² The report further elaborates if deferred tax assets are not included capital adequacy would be 98%⁷³. As a consequence, this could lead to the state being required to commit funding or request WorkCover to increase contribution rates to restore the scheme to a level of solvency.

The interim report fails to mention that the accounting method of recording deferred tax methods to project profit is a commonly used method and that the method is approved by the Australian Accounting Standards Board.⁷⁴

Chang & Cheryly make the following comment about deferred tax assets the journal of accounting and finance:

*"In an Australian context, we particularly expect this relation to hold for deferred tax assets from losses because of AASB 1020's strict recognition criterion of tax benefits being "virtually certain".*⁷⁵

Furthermore the Australian Accounting Standards Board 1020 State under paragraph 34 a deferred tax asset shall be recognised for the carry forward of unused tax losses and unused tax credits to the extent that it is probable that future taxable profit will be available against which the unused tax losses and unused tax credits can be utilised.

The factoring in of deferred tax assets is not an attempt to deceive stakeholders or distort the financial position of WorkCover. The recording of deferred tax assets is an established accounting method which is used regularly throughout the private sector. As previously stated if a deferred tax asset is in doubt it cannot be recorded. It is conclusive that the assertions made in the interim report about WorkCover's financial position are inaccurate.

⁷⁰ Queensland Government, (2012) Queensland Commission of Audit, Brisbane, Queensland Government

⁷¹ & Anor [2010] QSC 372 (29 September 2010)

⁷² Ibid

⁷³ Ibid

⁷⁴ Chang, C, Herbohn, K, & Tutticci, I 2009, 'Market's perception of deferred tax accruals', *Accounting & Finance*, 49, 4, pp. 645-673

⁷⁵ Ibid

Impact on Queensland economy

Following the reforms of 1997 WorkCover returned to a ratio of full funding which the scheme still maintains.⁷⁶ Because of the viability and effectiveness of the scheme there has been no requirement for the Queensland government to inject funds into the scheme to ensure its survival. Therefore the scheme has financially operated independently of state government funding and has not burdened the Queensland government's financial position.

To ensure competitiveness for Queensland businesses and to remove the barriers for businesses operating in the state there are a number of initiatives in place. This is to ensure that businesses are not discouraged from operating in Queensland because of a cumbersome system. It is evident that WorkCover is not a cumbersome system considering that in 2011 WorkCover Queensland had an employer customer satisfaction rate of 74% and a worker customer satisfaction rate of 84%⁷⁷. If WorkCover was impeding businesses financial viability the satisfaction for the scheme would be below 50%.

As previously explored in this submission the cost of a workplace injury can have an adverse effect on both businesses and the government. The WorkCover scheme is successfully mitigating these economic costs by achieving a return to work rate of 97%.⁷⁸

The most successful strategy to reduce the cost associated with a workplace injury is not to amend legislation which places further restrictions on the scheme. If this method was to be chosen, workplace injuries would still happen. Business productivity and competitiveness are tied to workplace health and safety performance. A workplace injury affects business competitiveness and productivity because there are reduced numbers of employees or extra employees would need to be bought into the workplace on a temporary basis. This would result in lower productivity which would have a negative impact on competitiveness.

The most effective method to reduce costs is by early intervention strategies. Rehabilitation and support needs to be provided to the injured worker. By doing this there is a reduced likelihood for common law claims for less serious injuries and injuries which prevent a worker who is unable to perform their normal duties.

Rehabilitation needs to be a proactive process which restores the worker to optimal physical, psychological, social, vocational and economic condition following injury or ill health. Rehabilitation needs to commence as soon as possible and continue until the worker is as close to their previous physical condition. Ensuring that re-training takes place, the long terms cost to the community will be reduced.

As previously mentioned in the submission, Queensland premiums are some of the lowest across the jurisdictional comparison. The slight increase in premiums is largely attributed to the growth in population. The increase in premiums is unlikely to negatively affect the amount of business which is conducted in Queensland.

⁷⁶ WorkCover Queensland, (2012) Caring For Queensland Employers and Workers, A 15 Year Journey, Brisbane, WorkCover

⁷⁷ WorkCover Queensland, (2012) A Status Review 1997-2011, Brisbane, WorkCover

⁷⁸ WorkCover Queensland, (2012) Caring For Queensland Employers and Workers, A 15 Year Journey, Brisbane, WorkCover

Employment growth

In trend terms the number of people employed in Queensland has increased from 2,332,900 in May 2011 to 2,343,400 in May 2012.⁷⁹ The growth in these figures indicate that there is a demand for labour and that WorkCover is not acting as an unnecessary barrier for entry into the labour market.

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

The aim of the amendments to the *Workers' Compensation and Rehabilitation Act 2003* in 2010 was to ensure WorkCover's ongoing financial viability. There was concern that increasing common law claims could affect the financial viability of the scheme. Full access needed to be available to workers who needed to pursue a common law claim.

It is two years since these amendments have been made which bears the questions that have these amendments been successful in stopping common law claims flooding WorkCover. From the period of 2010-2011 common law lodgements on average have decreased by 9.6%.⁸⁰ The actual projection of common law lodgements have decreased by 15- 20%.⁸¹ Less than 5% of statutory claims go to common law and 99% are settled before going to court.⁸² Previously common law would take a duration of three year where as the claims now have an average duration of 49 weeks.⁸³

In regards to payments common law payments have decreased by 7.8% which has led to a decrease in overall payments by 2.1%.⁸⁴ The average damage payments during 2010-2011 have reduced by 2.9% and respectively average outlay costs have reduced by 2.9% .⁸⁵ The average common law costs are down by 2.1% or 1.256 billion.⁸⁶

Whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment

The QCU and its affiliated unions do not support self-insurance for business. Under current arrangements there are regulations and functions in place which protect workers who are employed by companies that self-insure. In order to ensure that self-insurers are compliant with the Act, Q-COMP regularly conducts reviews of the licence holders. Q-COMP reviews their finances and their health and safety records. Furthermore a self-insurer is required to reinsure and if there is a history of poor performance additional cost will be imposed. Therefore under the current system of self-insurance there is an encouragement to ensure that self-insurers comply with Workers' Compensation legislation and Workplace Health and Safety legislation which leads to decreased operating costs.

⁷⁹ Australian Bureau of Statistics,(2012) Labour Force Australia 6202.0, Canberra, Australian Bureau of Statistics

⁸⁰ WorkCover, (2012) 10/11 Statistics Report United behind the values we share, Brisbane, WorkCover

⁸¹ WorkCover Queensland, (2012) 24 May Stakeholder Presentation, Brisbane, WorkCover

⁸² Ibid

⁸³ Ibid

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Ibid

Should Queensland look at decreasing the number of employees a self-insurer is required to have employed there are a number of scenarios which could happen. Each scenario is likely to result in increased costs for the workers' compensation scheme. This is dependent on the magnitude of changes which are made to the scheme. It is foreseeable that companies with better health and safety outcomes would look to self-insure and leaving the poor performers in WorkCover. This would result in a cost blowout for WorkCover.

It is the QCU's position that any proposed changes to self-insurance licencing should be the subject of an Actuarial Review of the projected impact of any such changes.

Due to changes in the composition of Australia's workforce, there is an increase in precarious work arrangements, with one in five workers being casual.⁸⁷ Casual workers are more likely to have an accident in the workplace.⁸⁸ Workers who are covered by a self-insurer are less likely to receive the required support and rehabilitation.⁸⁹ Because of the lack of security for casual employees it is easier to push a casual employee out of their job once they return to work. If workers are not being properly rehabilitated or returned to work a further strain will be placed on the economy and community.

Recommendation 10

The QCU recommends that any proposed changes to self insurance in Queensland should be the subject of an Actuarial Review prior to any implementation in order to ascertain the projected impacts on the scheme.

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

The Structural Review of the Queensland Workers' Compensation Scheme was quite extensive, with the work being undertaken overseen by a stakeholder committee. The final recommendations had the support of industry.

The QCU has in the past held Board positions at WHSQ, Q-COMP and Workers' Compensation, officers reported on the improvements in relationships and improved work outcomes for agencies once open communication commenced following the Review.

The recommendations that were able to be implemented, in our view, had a positive impact on the scheme and for employers and workers alike.

⁸⁷ Australian Bureau of Statistics,(2012) Labour Force Australia 6202.0, Canberra, Australian Bureau of Statistics

⁸⁸ McNamara. M (2006) The Hidden Health and Safety Costs of Casual Employment Report. Sydney, University of New South Wales

⁸⁹ Bowman, D. M., Adams, M., Lowdon, K., Grant, G., & Studdert, D. M. (2011). *Rehabilitation and compensation for injured workers: a review of the Australian schemes*. Melbourne: University of Melbourne.

Conclusion

The Queensland Workers' Compensation Scheme is in a strong position and is funded to 117%.

Employers in Queensland pay one of the lowest premium rates in Australia. The scheme provides adequate compensation to injured or ill workers or dependants when there is a fatality.

Rehabilitation services are providing a high level of return to work outcomes (97%) and assisting to minimise the numbers of common law claims. The legislative changes introduced in 2010 have assisted in stabilising the workers' compensation scheme. On this basis whilst the union movement has made a number of recommendations none relate to legislative changes as we have not identified any risks to the scheme that would warrant such action.

Recommendations

Recommendation 1.

The QCU recommends that the number one focus of government should be to assist workplaces improve their health and safety performance.

Recommendation 2.

The QCU recommends that an assessment of the businesses making claims on their workers' compensation policies be undertaken in order that they be segmented and targeted interventions be put in place utilising the principles of WHSQ's IPAM program.

Recommendation 3.

The QCU recommends that the work commenced on improving workers' compensation compliance, performance and rehabilitation in the construction industry be reviewed and recommenced.

Recommendation 4.

The QCU recommends that measures are put in place to review compliance of self-insurers in keeping a separation of workers' compensation information held by the insurer from the employment area of the business.

Recommendation 5.

The QCU recommends that self-insurance licences held by "group employers" have the obligation for the insurer to monitor the compliance of the employers with the Act on an ongoing basis; and that should a breach be discovered the capacity to intervene should the breach pose a risk to the licence.

Recommendation 6.

The QCU recommends that the Return to Work Assist Program continue with a sustainable money source established to assist with the costs of preparing people to return to work.

Recommendation 7.

The QCU recommends that the WorkCover Queensland intervention program aimed at capped employers continue.

Recommendation 8.

The QCU recommends that the stakeholder sessions held by WorkCover Queensland continue on a regular basis.

Recommendation 9.

The QCU recommends that WorkCover utilises its authority under the Act to enforce compliance by employers to supply return to work programs for injured workers.

Recommendation 10.

The QCU recommends that any proposed changes to self-insurance in Queensland should be the subject of an Actuarial Review prior to any implementation in order to ascertain the projected impacts on the scheme.