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JOINT SUBMISSION

The Australian Workers' Union of Employees, Queensland
Shop, Distributive and Allied Employees' Association (Queensland Branch) Union of Employees
Transport Workers Union of Australia, Union of Employees (Queensland Branch)

Submission to the Finance and Administration Committee

RE: Operation of Queensland's Workers' Compensation Scheme

"WorkCover Queensland – Putting Lives Back Together"

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1. Introduction

The Australian Workers' Union of Employees' Queensland (AWUEQ), the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA) and the Transport Workers' Union of Australia, Union of Employees (Queensland Branch) (TWU) are among Queensland's largest industrial unions, representing over 100,000 employees throughout the length and breadth of the State, across an exceedingly wide array of blue and white collar industries including, but not limited to –

- Aged Care
- Agriculture
- Aluminium
- Aviation
- Cash-in-transit industry
- Civil and Mechanical Construction
- Cement and Concrete Manufacture
- Fast Food
- Forestry
- Horticulture
- Local Government
- Manufacturing and Engineering
- Non-coal Mining
- Oil, Gas and Hydrocarbons
- Pastoral
- Public and Private Health
- Railway Construction
- Refining and Smelting
- Retail
- Steel
- Sugar
- Timber and Hardboards
- Tourism and Hospitality
- Transport – general and passenger
- Waste Management
- Warehousing and Distribution

Each year, the combined unions devote substantial resources and time toward the provision of legal advice and representation for union members in workers compensation matters, whether statutory claims based or common law based.

The wide range of industry portfolios and callings represented by the combined unions, together with the large body of work undertaken every year by them through the workers' compensation system, gives the combined unions the unique ability to offer valuable and insightful commentary on the nature of the Scheme and its' fundamental importance to the protection of workers and their families.

The combined unions appreciate the opportunity to make this submission to the Finance and Administration Committee ("the Committee") on the operation of the Queensland Workers' Compensation Scheme ("the Queensland Scheme").

In doing so, it should be noted that the TWU has already filed a substantial submission to the Committee in its' own right, and is joining the AWU and the SDA in this submission to reinforce the fundamental importance that the Scheme represents for all Queensland workers, whether union members or not.

To avoid unnecessary repetition, there will be components of this joint submission that draw upon the submissions that have already been lodged by the TWU. However, it should be noted that the combined unions are in complete accord with respect to the substantive issues canvassed, and each of the submissions should, wherever possible, be read and construed in such a manner.

2. Executive Summary

A. Independent scholarly studies demonstrate that central schemes, such as the Queensland Scheme, consistently have –

- lower total costs compared to private or managed schemes
- better asset to liability ratios (ie. they are better funded)
- lower premium rates
- better satisfaction ratings by customers
- higher return to work rates than private or managed schemes

B. The Queensland Scheme's performance is sustainable, robust and fair –

- it has a return to work rate of nearly 99%
- it has lower disputation rates than other domestic schemes
- it resolves disputed claims much more quickly than other schemes
- it has the second lowest premium rates in the country
- has seen the number of common law claims decline by nearly 10% in the post-2010 reform period
- has seen common law damages decline by 30% in the post-2010 reform period
- to 30 June 2011, had the best funding ratio of any domestic scheme at 112%

C. The Queensland Scheme has responded immediately and positively to the reforms introduced in 2010 –

- common law claims damages have declined by 30%
- common law claims have declined by nearly 10%

D. The importance of journey claims –

- journey claims only represent 6% of all Scheme claims
- journey claims have been a long-standing feature of the Scheme, and similar domestic schemes, for over 70 years

E. Self-Insurance –

- premiums are higher in schemes that promote self-insurance arrangements
- small and medium sized businesses cannot compete with big business under self-insurance schemes
- return to work rates in centrally funded schemes are much better than those that promote self-insurance and private underwriting
- centrally funded schemes have better funding ratios than schemes that promote self-insurance and private underwriting
- self-insurance and privately underwritten schemes promote non-compliance and premium evasion

F. Recommended amendments by the combined unions

3. The Parameters of the Review

Parliament has charged the Committee with the responsibility to consider the following matters with respect to the Queensland Scheme –

A. the performance of the scheme in meeting its objectives under section 5 of the Act;

B. how the Queensland workers' compensation scheme compares to the scheme arrangements in other Australian jurisdictions;

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

D. 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;

E. whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment;

F. 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.

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

The establishment, superintendence, regulation and operation of the Queensland Scheme is governed by the provisions of the *Workers' Compensation and Rehabilitation Act 2003* ("the Act").

Relevantly, s.5 of the Act details the objectives of the Queensland Scheme as follows -

"5 Workers' compensation scheme

(1) This Act establishes a workers' 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.*

(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.*

(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.*

(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.*

(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."

Restated and distilled, the Queensland Scheme's primary focus is to –

- regulate the provision of statutory compensation and access to common law damages for employees and their dependents where injuries at work occur;
- encourage improved workplace health and safety provision by employers;
- establish and regulate workers' compensation insurance schemes, including self-insurance schemes to approved licence holders;
- specify the extent of employers' liability for compensation;
- provide for the management of employee return to work programs and rehabilitation;
- ensure industry competitiveness by limiting the imposition of too heavy a burden on employers and the community

In terms of the Queensland Scheme's performance, the following facts should be noted –

- in 2011/12, the Queensland Scheme posted a combined return to work rate for injured workers of 98.6%[1] - this is an exemplary achievement in meeting the statutory objectives as outlined at s.5(2)(f) of the Act;

- the Queensland Scheme has consistently lower rates of disputation than other domestic schemes (3% compared to 9.7% in Victoria), [2] and nearly 82% of disputed claims in the Queensland Scheme are resolved within 3 months, which compares exceedingly favourably against Victoria (47.8%), New South Wales (45.3%) and Comcare (10%);[3]

- open access common law claims were down by a factor of 9.6% in 2010/11 due to the statutory reforms to the Queensland Scheme by the previous Labor Government, and are forecast to reduce by a further 2.5% in 2011/12;

- in 2010/11, average costs on common law claims were down 1.4%, and are forecast to decline by a further 6.3% in 2011/12; [4]

- average post-2010 reform total common law damages declined by 30% compared to pre-2010 reform totals[5]

1 Year-to date figure, Q-Comp Queensland workers' compensation scheme monitoring May 2012, page 9

2 Safe Work Australia, Comparative Performance Monitoring Report, 13th Edition, page 38

3 In 2009/10, Safe Work Australia, Comparative Performance Monitoring Report, 13th Edition, page 39

4 Q-Comp Queensland workers' compensation scheme monitoring May 2012, page 10 (4991 in 2009/10, 4510 in 2010/11, 4400 in 2011/12)

5 ibid, p11

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

Compared to other Australian jurisdictions, the Queensland Scheme is properly characterised as a "central scheme", as opposed to "private schemes" and "managed schemes" which variously operate throughout the country. [6]

In their cross-jurisdictional analysis of Australian workers' compensation systems, Purcal and Wong ascribe the sole provision of workers' compensation regulation and insurance by the State to the concept and definition of a "central scheme", and in doing so identify the Queensland Scheme as the contemporary example of this type of system, as compared to New South Wales, Victoria and South Australia (collectively "managed schemes") and Western Australia, Tasmania and Northern Territory (collectively "private schemes").

This distinction is important with respect to any analysis of the operation and effectiveness of the Queensland Scheme, as it permits proper comparisons to be drawn – not only as between States, but also between the competing models variously adopted by the States.

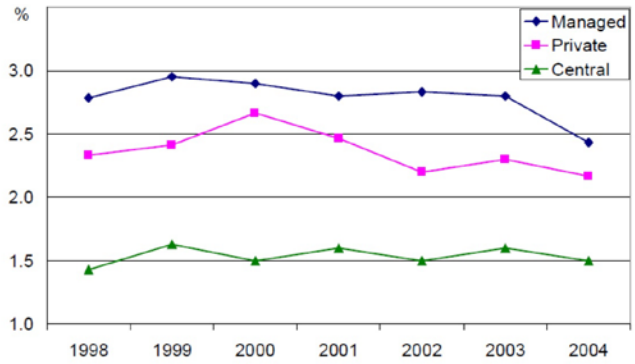
The work of Purcal and Wong is one of the very few standardised and multi-jurisdictional scholarly reviews to have been conducted within Australia on comparative workers' compensation schemes, and draws heavily on the National Workers Compensation Database, which has consistently been used for the information and consideration of the Workplace Relations Ministerial Council.

The key findings of the comparative analysis conducted by Purcal and Wong can be summarised as follows –

Central Schemes Have Lower Total Costs

- central schemes (such as the Queensland Scheme) consistently have the lowest total costs as a proportion of wages and salaries compared to private and managed schemes operated in other States[7] (refer below graph)

FIG. 3 Total scheme expenditure/wages



Source: Purcal and Wong, ***Australian Workers' Compensation: A Review****, October 2007*

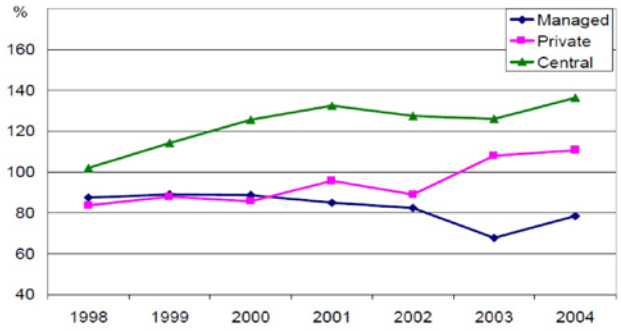
6 Purcal, S. and Wong, A., ***Australian Workers' Compensation: A Review***, p2, October 2007, http://wwwdocs.fce.unsw.edu.au/actuarial/events/symposium/2007/paper/Purcal_Wong_AustWCReview.pdf

7 ibid, p15

Central Schemes Are Better Funded (Assets to Liabilities Ratio)

- on average, central schemes are consistently much better funded than the other schemes - that is, the asset to liability ratios for central schemes are favourably much higher when compared to private and managed schemes[8] (refer below graph)

FIG. 4 Asset to liability ratio



Source: Purcal and Wong, ***Australian Workers' Compensation: A Review****, October 2007*

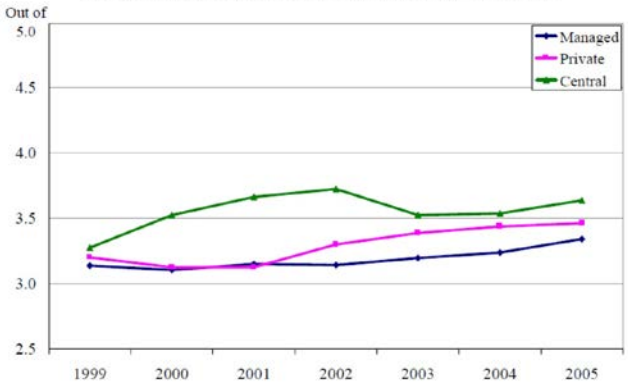
Central Schemes Have Lower Premium Rates

- the average premium rate of central schemes are lower than private and managed schemes[9]

Central Schemes Are Rated As Better Quality Service Providers By Customers

- on average, central schemes are consistently rated better in quality of service than private or managed schemes[10]

FIG. 5 Average quality of service, rated by customers



Source: Purcal and Wong, ***Australian Workers' Compensation: A Review****, October 2007*

Central Schemes Return People To Work Faster

- central schemes return people to work faster and have the best claims management performance when compared to private or managed schemes[11]

8 ibid, p15
9 ibid, pp15-16
10 ibid, pp6-7

In their concluding discussion on the results of the data set analysis, Purcal and Wong make the following important comments –

> "On average, the managed scheme had the worst claims management performance. It had the highest frequency rate of injury and the highest cost ratio. Not surprisingly, it also had the highest premium rate on average and was the poorest funded scheme. The private scheme performed slightly better, with the second highest cost ratio and premium rate. While it had the lowest injury rate, this was offset by a higher cost ratio and lower funding ratio.
>
> The empirical results show that the government run central scheme had the best claims management performance. Due to its superior ability to return people to work faster and manage its injured workers appropriately, costs and premium rates were lower and it remained better funded than the other schemes. In fact, it was the only scheme that had a funding ratio above 100 per cent in every year of the sample period. Further, we observe similar variability of the claims management performance of the schemes over the sample period. These results suggest that the claims management performance of the government run central scheme is superior, in contrast to previous studies of WC insurance which advocated private provision (Butler and Worrall 1986, Thomason 1999 and Ruser 1991).
>
> First, the results advocate for a central scheme to be adopted. The government run scheme has the lowest level of agency costs with incentives aligned closest to those desired. The government has greater control over provision of WC service. Furthermore, there may be scale efficiencies from having a single provider, a common argument for monopoly provision of services. We note, however, that whilst the central scheme appears to best achieve the aims of WC insurance, it may be difficult for the state government to switch over to a central scheme. This would involve the government actively taking control of a market which already has some degree of private involvement. Since WC insurance is a very politically sensitive area and therefore subject to many considerations other than simply the welfare of society, opposition to greater government control from private insurers is likely to occur."[12] (emphasis added)

The unequivocal observations and findings of this background study are fortified by the following cross-jurisdictional indices, as they relate to the performance of the Queensland Scheme when compared to that of other Australian schemes –

- the Queensland Scheme has lower disputation rates than other schemes (eg. 3% in 2009/2010 compared to 9.7% in Victoria); [13]

- disputes are resolved more quickly through the Queensland Scheme than disputes that occur in other schemes – 81.6% of disputes are resolved within 3 months under Workcover, compared to 10% under Comcare (Commonwealth), 45.3% in NSW and 47.8% in Victoria;[14]

- on a standardised comparison, Workcover consistently has the second lowest premium rates (as a percentage of payroll) in

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11 ibid, p16
12 ibid, pp16-17
13 Safe Work Australia, Comparative Performance Monitoring Report, 13th Edition, page 38
14 ibid,p39

Australia[15], although it should be noted that the risk profiles between the Queensland Scheme and the lowest premium domestic scheme, Comcare, vary considerably because of the relative industry profiles (see table below)

Year	NSW	Vic	Qld	WA	SA	Tas	NT	ACT	Comcare
2009-10	1.82	1.39	**1.12**	1.22	2.76	1.40	1.82	2.03	**0.93**
2008-09	1.83	1.38	**1.06**	1.22	2.81	1.38	1.77	2.14	**0.95**
2007-08	1.93	1.46	**1.09**	1.38	2.83	1.49	1.81	2.28	**0.97**

- to 30 June 2011, the Queensland Scheme had the best funding ratio of any domestic scheme[16] (see below table)

State/Scheme	30 June 2011	30 June 2010
New South Wales	Assets: $13 319 m. Liabilities: $15 682 m. Funding Ratio: 85%	Assets: $12 464m. Liabilities: $14 047m. Funding Ratio: 89%
Victoria	Assets: $9662m. Liabilities: $8991m. Funding Ratio: 108%	Assets: $8728m. Liabilities: $8768m. Funding Ratio: 100%
Queensland	Assets: $3285m. Liabilities: $2942m. Funding Ratio: **112%**	Assets: $3082m. Liabilities: $2697m. Funding Ratio: **114%**
South Australia	Assets: $1754m. Liabilities: $2705m. Funding Ratio: 64.8%	Assets: $1571m. Liabilities: $2553m. Funding Ratio: 61.5%
Northern Territory	Assets: $245.2m. Liabilities: $267.3m. Funding Ratio: 92%	Assets: $252.3m. Liabilities: $248.2m. Funding Ratio: 101.6%
Comcare (Cth)	Assets: $1516m. Liabilities: $1671m. Funding Ratio: 91%	Assets: $1465m. Liabilities: $1411m. Funding Ratio: 103.8%

[15] Safe Work Australia, Comparison of workers' compensation arrangements in Australia and New Zealand, April 2012, p212

[16] ibid, p210

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

A) WorkCover's current and future financial position

From a financial position, the overwhelming evidence indicates that the amendments to the Act which were put in place in 2010 are having a positive financial impact and are achieving the objective required under the Act to balance fair and appropriate benefits with reasonable cost levels for employers.

WorkCover's reserves as a ratio are currently at 112% which is the second best performance in Australia. When this is considered in conjunction with reasonable premium rates, a reduction in common law claims by 10% since 2010, a 30% reduction in common law damages since 2010, the quickest claim dispute resolution and a return to work rate of nearly 99% it is beyond argument that the future financial position of the scheme is solid.

B) Impact of WorkCover on the State's economy, competitiveness and growth

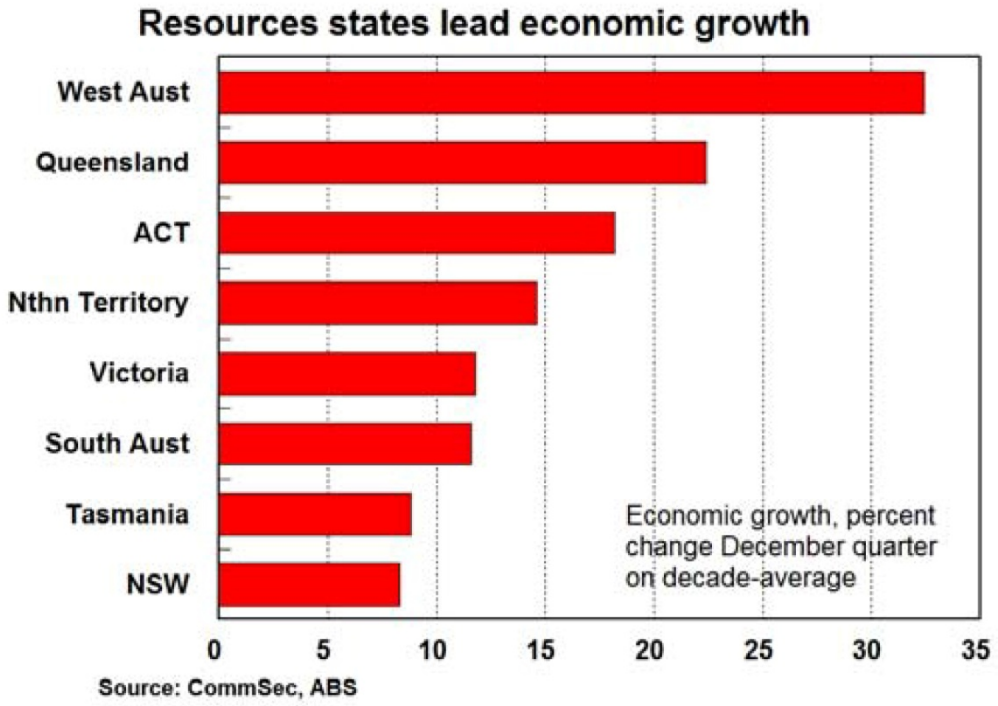
Economic indicators indicate that Queensland can look forward to substantial growth in the future which means that the cost of operating the scheme and employer premiums will have a negligible impact on business competitiveness and economic development.

Queensland Treasury and Trade's publication "Queensland Economic Review", June 2012 indicates that -

- State final demand, which measures economic activity, grew by over 7.5% over the year;
- business investment was up 31.7% over the year; and
- new engineering construction grew by 59.5%.

CommSec's State of the States, State and Territory economic performance report, April 2012 indicates that -

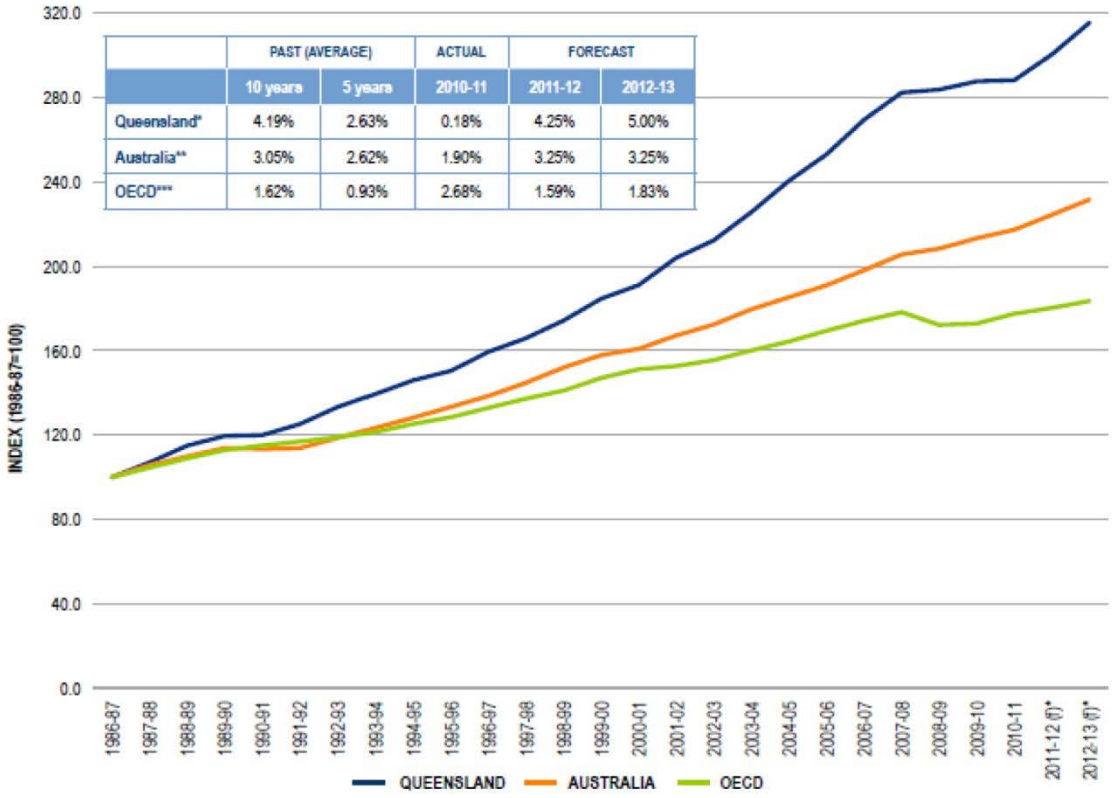
- State final demand was up 22% on its long term average;
- Queensland has the fastest economic growth rate in the nation at 9.8% (this is above WA at 9.1%);
- equipment investment is up by 59% over the year (consistent with the QER);
- construction work in Queensland is 53% above decade averages (with engineering up 120%);
- population growth has increased for two straight quarters.



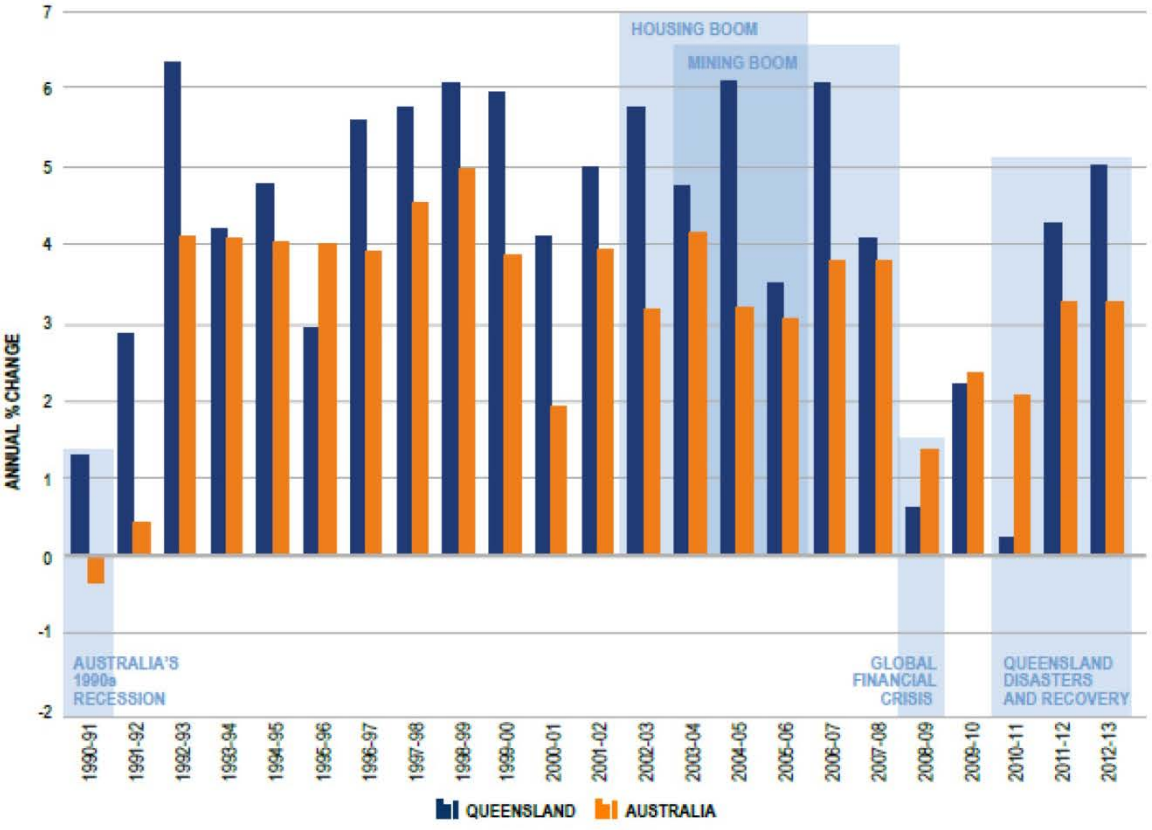
The Queensland Treasury Corporation Investor Book June 2012 indicates that -

- economic growth in Queensland is forecast to exceed the average growth rates of Australia at 4.25% in 2011-2012 FY and 5% in 2012-2013 FY;
- this growth will be underpinned by business investment and household consumption;
- Queensland employment growth is expected to exceed the national average at over 2%;
- Queensland's strong economic growth will be underpinned by strong population growth at 1.75% in 2011-2012 FY and 2% in 2012-2013 FY;
- strong economic growth is forecast for Queensland's major trading partners over the next 5 years which should underpin our economic future;
- there is expected to be large increases in exports and business investment which will assist economic growth in the State; and
- relative to other States and Territories, Queensland is already a low tax State recouping less than $2500 per capita compared to New South Wales, Victoria, Western Australia and ACT which are over $2500 per capita.

Economic Growth Comparisons from the Investor Book



	PAST (AVERAGE)		ACTUAL	FORECAST	
	10 years	5 years	2010-11	2011-12	2012-13
Queensland*	4.19%	2.63%	0.18%	4.25%	5.00%
Australia**	3.05%	2.62%	1.90%	3.25%	3.25%
OECD***	1.62%	0.93%	2.68%	1.59%	1.83%



As the Premier stated in the House on 31 July 2012, *"the latest Deloitte Access Economics business outlook report forecast 4.8 per cent growth in 2011-12 and the potential to become the nation's fastest growing economy."*

Investment is also expected to be bolstered by a 125 basis point reduction in the cash rate since November 2011, with more reductions expected in the future.

It is the submission of the combined unions that an effectively operating Scheme will be integral to maintaining and enhancing economic growth and competitiveness. In a tight labour market, it will be essential that injured employees can be treated, supported, rehabilitated and returned to work as soon as possible so that skills and competencies can be utilised, helping businesses to become more competitive. The calibration of the Scheme (as it currently exists) is optimal in that it delivers timely claims administration, excellent return to work credentials and equitable premium rates for employers.

7. 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

Queensland's workers' compensation system compensates Queensland workers who are injured at work[17], financially supports the dependants of workers killed at work, and encourages improved health and safety performance by employers[18]. The scheme itself has been the subject of constant monitoring, review and legislative and administrative reform for almost two decades. At least seven major reviews or examinations have been conducted since 1996[19]. The focus of these reviews has been, almost uniformly, to maintain the integrity of Queensland's unique system of workers' compensation.

The reform journey has been significant, and is worthy of reflection and review by committee members.

A central part of the reform journey, as noted above, has been to maintain the essential integrity of a workers' compensation scheme that is unique in Australia. Queensland, as the Information Paper prepared for the Committee by the Department of Justice and Attorney-General (DJAG), Q-COMP and WorkCover notes, is the only jurisdiction with a centrally funded "short tail" scheme. The Queensland system has successfully – and sustainably – married time-limited statutory benefits (which expire after five years) with unrestricted access to common law damages for workers who can prove negligence by an employer. These two elements, in combination, have been critical to the on-going success of the Queensland scheme, relative to the financial problems and instability that have plagued other state workers' compensation schemes.

As a consequence, the Queensland scheme remains the only scheme in Australia that is fully funded, and whose solvency ratio is in excess of 100%[20].

Save for the First Kennedy Report, upon which comment is made below, all of the reviews conducted over the past decade and half have supported the retention of these two key elements of the Queensland scheme.

The *Inquiry into Workers' Compensation and Related Matters in Queensland* conducted by Mr Jim Kennedy AO in 1996 ("First Kennedy Report") made 79 recommendations to government. This report recommended both the abolition of journey claims and the introduction of thresholds for common law actions. Neither of these recommendations were ultimately implemented. It is of significance, however, that notwithstanding the rejection of these recommendations, the scheme thereafter continued to deliver the lowest or second lowest average premium rate for employers when compared with all other State schemes, while providing substantial benefits to workers and their families. These results were achieved within a

17 Including injuries sustained travelling to and from work

18 Information Paper at page 4

19 Appendix 1 to the Information Paper prepared by the Department of Justice and Attorney-General, Q-COMP and WorkCover Queensland for the Finance and Administration Committee ("Information Paper")

20 Appendix 2 to Information Paper

framework of on-going solvency, even when the extraordinary impact of the Global Financial Crisis is taken into account.

The most recent substantive review, commenced in 2010 and entitled *Ensuring sustainability and fairness*, involved extensive and far reaching community consultation. The process leading up to that report involved discussion papers and direct community consultation and feedback. Central to that report and its recommendations was the work of a large and diverse working group involving representatives from the Department of Justice and Attorney-General, Q-COMP, and WorkCover, as well as leaders from business and employer organisations, trade unions and the legal, accounting and actuarial professions.

The final recommendations arising out of that review were adopted and implemented by the Bligh Government. The recommendations of that report are now bearing fruit, with the Information Paper prepared by DJAG, Q-COMP and WorkCover noting, amongst other things, that:

- The scheme remains solvent, with equity of approximately $502 million[21];
- The current funding ratio for the scheme is approximately 117%[22];
- Queensland businesses are paying the second lowest average premiums compared to other comparable state schemes[23];
- The number of common law claims has reduced and stabilised since 2010[24];
- The provision for outstanding claims for the 2011/2012 financial year was reduced by 84% from $328 million to $50 million, principally due to a reduction in expected common law average settlement claims and a reduction in the ultimate number of projected common law claims[25];
- Common law settlement payments have reduced over the past two years[26]; and
- The cost to the scheme for journey claims remains approximately $45 million – or just 3.5% of total scheme costs of $1.256 billion[27] – the equivalent of $0.05 of the average premium rate[28].

One of the outcomes of the *Ensuring sustainability and fairness* report was the implementation of a structural review of institutional and working arrangements, conducted by Mr Robyn Stewart-Crompton. The 51 recommendations of that structural review are set out in Appendix 3 to the Information Paper, and are still in the process of being implemented.

The constant monitoring, review and reform of the scheme has been central to its ongoing success over the past two decades, resulting in low premiums for Queensland employers, while delivering significant and sustainable benefits for Queensland workers and their families, other stakeholders and the broader

21 Information Paper p. 4
22 Information Paper p. 4
23 Information Paper p. 15
24 Information Paper p. 26
25 Information Paper p.13
26 Information Paper p. 27
27 Information Paper p. 5
28 Information Paper p. 37

community. That monitoring and review process has now been institutionalised through legislative amendment, requiring 5 yearly reviews, rather than being driven by external shocks.

The recent *Ensuring sustainability and fairness* report and the consequential structural review of institutional and working arrangements were significant milestones in the recent history of the state scheme. As noted previously, the *Ensuring sustainability and fairness* report recommendations, in particular, followed after very significant levels of stakeholder and community input.

A significant feature of that report was the recommendation that the essential features of Queensland's unique workers' compensation scheme be maintained, being short tail statutory benefits married with access to common law proceedings, unrestricted by any threshold test.

Within that framework, a range of difficult measures were also recommended to government. These were adopted and implemented. These changes to the system are proving to be beneficial to the systems on-going sustainability and viability.

Another consequence of these most recent reviews is a legislated review mechanism. The current parliamentary review is the first of the mandatory reviews.

The recommendations contained in both of the most recent review reports should continue to be implemented, with such implemented being carefully and closely monitored. Any further significant reform that would undermine or damage the integrity of Queensland's current "short tail"/open common law/centrally funded workers' compensation scheme should not proceed until the recommendations of these two reports are implemented, and the success or otherwise of the recommendations are considered in the medium term.

8. Journey claims

The combined unions rely upon the submissions already made to the Committee by the Transport Workers' Union.

In addition to those submissions, we draw the Committee's attention to the fact that journey claims – the statutory protection of workers travelling to and from work – has been a long-standing feature of domestic workers' compensation for a significant period of time, having its first emergence in New South Wales during the 1920's, and the progressive adoption by other State and Territories in the mid-1940's.[29]

The level of journey claims made within the Scheme is low (at 6%) and does not represent a burden on the administration of the Scheme.

If anything, the issue of journey claim cover for workers injured in the course of travelling to and from work is more of an ideological hatred by certain groups than a properly considered and factually based position. One needs look no further back than the Queensland parliamentary debates of 1996 to know that this is the case.

[29] Purse, K., *The evolution of workers' compensation policy in Australia*, Health Sociology Review (2005) 14: 8-20

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

At the most fundamental level, the combined unions are opposed to the concept of self-insurance with respect to the provision of workers' compensation for injured workers.

This position has not changed since 1916, when Queensland Labor Premier T. J. Ryan introduced world-first legislation to monopolise the administration and provision of workers' compensation through the State Government Insurance Office – a move that was then met with fierce opposition from the conservative ranks and business.

The years since 1916 have seen workers' compensation schemes treated as a political football in clear episodic bouts throughout Australia. Largely, issues such as self-insurance loom prominently in these debates. Tragically, the real focus of protecting workers that are injured at work remain a second-order issue.

There is much rhetoric employed by various commentators about the issue of self-insurance. Most of it is complete nonsense, and it is time to let the facts speak plainly on this subject.

The devolution of responsibility for the administration and provision to self-insurers **DOES NOT** improve outcomes for injured workers or improve the robustness of overall Scheme administration. We again direct attention to the work of Purcal and Wong cited above at pages 5-10. Further to that research, we bring to the Committee's attention the cross-jurisdictional analysis of Kevin Purse, where the following comments on the historical evolution of domestic workers' compensation schemes are made –

> "More generally, the administration of workers' compensation schemes in Australia had become increasingly sclerotic. This was especially evident in the costs of scheme administration. **With the exception of Queensland**, the state schemes had largely been underwritten and administered by private insurers. The result was that the cost of delivering compensation to injured workers had become a serious strain on scheme finances. During the latter part of the 1970's, it cost 38 cents in New South Wales to deliver one dollar of compensation to injured workers and 39 cents in South Australia (Byrne 1980: 44). High administration costs were also a conspicuous feature of the Victorian scheme, and in the early 1990's they accounted for some 31 percent of the premium dollar. **By contrast, the costs of scheme administration in the publicly underwritten Queensland scheme amounted to a mere 6 percent (Cooney 1984: 1.4).**
>
> The inefficiencies of private underwriting were also highlighted by widespread premium evasion (New South Wales Premier's Department 1986: 49, Cooney 1984: 13.3) and the propensity of insurers to engage in destructive bouts of premium discounting. Designed to increase market share, premium discounting invariably gave rise to artificially low premiums followed by unnecessarily excessive increases. Small and medium-sized employers were particularly hard-hit as they did not have the bargaining power of large corporate employers necessary to negotiate more favourable terms with the insurance companies….The inherent volatility of private underwriting was

> increasingly depicted by critics as "economically destabilising" (South Australia, Parliamentary Debates 1986: 85).[30] (emphasis added)

There are a number of key points to be reiterated with respect to the academic research of Purcal, Wong and Purse, those being –

1) Premiums in central schemes (like Queensland's) are historically and demonstrably lower than schemes that rely on elements of private underwriting **FACT #1**

2) Small and medium sized businesses cannot compete with big business with respect to private underwriting due to deliberate and volatile premium discounting and lack of relative bargaining power **FACT #2**

3) Return to work rates in central schemes are consistently better than privately managed schemes **FACT #3**

4) Central schemes have demonstrably better funding ratios than schemes that have higher levels and mixes of private underwriting **FACT #4**

5) Privately underwritten schemes encourage premium evasion and non-compliance **FACT #5**

In the view of the combined unions, if anything were to be done at all with respect to self-insurance arrangements in the Scheme, it should be the complete removal of this feature from the Scheme.

Short of such a measure being undertaken, no changes should be made to self-insurance arrangements in the Scheme.

The balance of history tells us clearly that the move away from central administration and funding of workers' compensation arrangements only weakens the performance of those schemes, rather than strengthening them.

[30] ibid

10. Recommended amendments by the combined unions

A. Long Term/ Permanently Injured Workers

The combined unions have extensive experience in trying to assist this group of injured workers to retain gainful employment after their workers' compensation claims are closed.

What this experience has demonstrated is that many injured workers who fall into this category are not well served by the current Scheme in terms of the lack of sufficient support and unfair outcomes they get from it. In fact, it is not uncommon for workers in this category to often end up unemployed through no fault of their own.

In particular, we have witnessed numerous occasions where injured workers, whose injuries are of such a nature as to render them permanently unable to return to their normal, pre-injury duties, end up having their claims closed simply because they are offered a lump sum payment resulting from a permanent impairment assessment.

Many of these workers have been successfully performing suitable alternative duties provided by their employers while under the claim, but, as soon as their claims are ceased about a month after the lump sum offer is made, the suitable alternative duties that they have been successfully performing (often for some time) are withdrawn by the employer, simply because the employers are no longer legally required to provide them.

What then usually happens is that, despite the fact that the injured worker still remains partially incapacitated for work (medically certified) and is still able to continue to successfully perform the same suitable, alternative duties, once the employer withdraws access to these duties, the only way that the employer will allow the worker to work is if they can get a full medical clearance for full, normal, pre-injury duties (which many are unable to do). Otherwise, they are excluded from the workplace and put on an ongoing "Leave of Absence", forced to use any available leave entitlements they have to survive financially (and unpaid if they are casual or have run out of leave) and ultimately terminated from employment if they remain unable to obtain full medical clearance for their usual jobs within a 12 month timeframe from when they were originally injured.

This happens to a significant number of injured workers, particularly in the retail industry, every year. These workers end up unemployed and joining the dole queue with limited prospects of finding alternative work without assistance.

Of course, the current provisions of the Scheme supposedly provide this group of workers with assistance if their inability to resume full, normal duties is medically established while their claim is still open. However, in the combined unions' experience, the current provisions are grossly inadequate and little if any real effort is made by the insurers (particularly the self-insurers) to help these workers find suitable permanent alternative employment.

For a start, in many cases, by the time the medical judgment is made that an injured worker will not be able to return to their pre-injury duties, the insurers often bring the

claim to a head and end it quickly, leaving little time to seriously assist the worker involved to find alternative employment. Of course, once the insurer has ended the claim, they are not interested in providing any further support or assistance to such workers – they are on their own.

Naturally, the insurers will say that they do provide assistance to injured workers in this situation. However, such assistance in the combined unions' experience is superficial and of little actual help. For example, some workers in this situation may be referred for a "vocational assessment" by the insurer. However, the extent of assistance they get from this referral is usually some help to put together a resume and advice that perhaps they should target office work or traffic control work. Under the current provisions, there is no referral to an external professional Job Search Agency and no active, practical assistance to help them to find suitable permanent alternative employment or re-training to develop new skills to assist the injured worker to find a job in another more suited industry.

In summary, workers who get injured at work through no fault of their own end up being thrown out of the workers' compensation system onto the work scrapheap, dependent on social security benefits (if they are entitled to them) with little or no help to find suitable alternative employment and, therefore, with poor prospects of finding other employment.

Recommendation

The 12 month protection of employment after a worker suffers a work injury should be extended to 24 months to provide adequate time for the injury to progress to a point where those injured workers who will not be able to return to normal, pre-injury duties can de medically identified as such and enough time remains under the claim to facilitate real assistance for them to locate more suitable permanent employment before the claim ends and their employer terminates their employment for medical incapacity.

Once such injured workers are identified, there should be a mandatory requirement under the Scheme for the insurer to refer that injured worker to an accredited external Job Search Agency for a minimum period (ideally 6 months, but at least 3 months) to practically assist the worker to find an actual suitable permanent alternative job (or at least substantive re-training) before their employer has the opportunity to sack them for medical incapacity.

The nexus between lump sum offers for permanent impairment and automatic closure of the claim should be broken. Under some other States Schemes, injured workers can be offered (and accept) lump sum payments for assessed permanent impairments without affecting their ongoing right to weekly benefits for lost wages while they remain either totally or partially incapacitated for normal duties. This is much fairer as a lump sum payment is meant to compensate the worker for future medical expenses, not for lost wages or loss of employment due to the injury, so loss of the claim (which often results in loss of the job) simply because the injured worker has received a lump sum payment (often a fairly meager amount) for future medical expenses is clearly unfair and lacking in natural justice.

The combined unions believe that if these recommendations were implemented, many long-term injured workers who currently lose their jobs would not do so, thereby reducing to a large extent the number of this category of injured worker who would ultimately go forward to sue under common law. So the cost of these suggested measures, we believe, would ultimately be more than compensated for by the greater overall lowering of costs to the Scheme via the reduction in common law claims.

B. "Reasonable Management Action" provisions in relation to claims for psychological injury

The interpretation (particularly by retail industry self-insurers) of what constitutes "reasonable" management action is (we believe deliberately) currently far too broad, which results in many legitimate claims being excluded based on these provisions alone. One only need look at how many psychological injury claims get rejected compared to how many physical injury claims get rejected to know that something is very wrong in this regard.

The subjective interpretation of what is or is not regarded as "reasonable" is further exacerbated by the vested interest that self-insurers have to save money directly by rejecting claims. Further complications which add to the unfairness of these current provisions include the use of a "global view" of management actions by those reviewing rejected claims (where, if not all actions are deemed to be "unreasonable", the claim can still fail) and the subjective interpretation that management actions may be imperfect while not being necessarily regarded as "unreasonable" also makes getting such claims accepted even more difficult. We have also seen some claims which have failed on the basis that management's response to bullying which caused a psychological injury was deemed "reasonable" while ignoring the actual event or events that caused the injury in the first place.

We have also noticed that, in the absence of witnesses, if a worker's version of events which caused the psychological injury differs from a manager's version of events (particularly when the manager claims to have acted "reasonably"), the manager's version is almost always accepted over that of the worker (again, particularly by the self-insurers) leading to unfair rejection of claims.

Recommendation

Ideally, the "reasonable management action" provisions should be removed altogether due to their subjectivity and, therefore, obvious unfairness.

Alternatively, the concept of "reasonable management action" needs to be reviewed and amended to better define it to make it fairer for injured workers, because at the moment, it is heavily weighted towards the insurer and too open to subjective and self-serving interpretation, making it unfair for injured workers.