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The Research Director
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Dear Sir/Madam

Re: Submission to the Finance and Administration Committee
Inquiry into the Operation of Queensland's Workers' Compensation Scheme

On behalf of the Association of Self Insured Employers of Queensland (ASIEQ) I would like to thank you for the opportunity to contribute to the Inquiry into the Operation of Queensland's Workers' Compensation Scheme. I have attached a submission that has been developed in consultation with our members which endeavours to provide a balanced position having regard to the individual views of our members.

Our submission reflects our commitment over the past several years to improve the scheme by striving for better outcomes for workers and employers. Our association has been at the forefront of promoting employer based injury management strategies and the importance of linking Safety, Health, Wellness and Injury Management in the workplace to achieve better outcomes. It is therefore pleasing to note the new Minister, Hon. Jarrod Bleijie, has given a commitment to injury prevention and responsive injury management to achieve better outcomes for injured workers.

This year our association changed its primary focus to planning for a sustainable future and is committed to the promotion of our 2013 Conference entitled, "The Evolution of Injury Management towards Better Business Practices", which will encourage all employers to develop employer based injury management strategies to improve outcomes.

Our submission is formulated with a view to improving the scheme through a positive scheme focus, planning for the future and greater flexibility in insurance and in particular employer based injury management arrangements.

Please do not hesitate to contact our association if clarification or further details are required regarding the attached submission.

Yours faithfully

Victoria Barham
Chair ASIEQ



**Submission to the Queensland
Legislative Assembly –
Finance and Administration
Committee**

**RE: Inquiry into the Operation of
Queensland's Workers'
Compensation Scheme**

**Submitted by the
Association of Self Insured Employers
of Queensland (ASIEQ)**

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About the Association of Self Insured Employers of Queensland (ASIEQ)

The Association of Self Insured Employers of Queensland (ASIEQ) is a representative group acting primarily for licensed self-insured employers within the Queensland workers' compensation environment.

The association's current membership includes all 25 licensed self-insured employers that cover approximately 10% of the overall Queensland workers' compensation scheme.

The membership of the association consists of a diverse range of large organisations and businesses (approx 260 employers) that operate across a wide range of industries that contribute significantly to the Queensland economy and community. From the remote North West through central Queensland to all major cities and towns, every Queenslanders benefits in some way from the services provided by our members.

Our membership includes local government authorities, national companies and global/multinational corporations that employ over 200,000 workers in the state and stimulate significant economic opportunities and growth for the Queensland economy.

Whilst operating across vastly different industries and businesses, there is a common thread between members in regards to a strategic commitment to injury prevention and responsive injury management.

To become a self-insured employer, each entity must demonstrate to the relevant Queensland authorities that they have a higher level of commitment to safety, health and injury management than the average employer. These standards are then subject to regular reviews by government bodies to ensure these higher standards are maintained whilst a self insurance licence exists.

In addition to regulating compliance to a higher standard, Q-COMP (the regulatory authority), promotes and encourages a continual improvement approach to injury management. Q-COMP has supported ASIEQ's initiatives to provide forums to members and employers to promote employer based injury management strategies and develop coordinated approaches to improving outcomes for injured workers.

Our association is committed to improving the Queensland scheme and strives to build relationships with key stakeholders with a view to developing and promoting initiatives that will continue to reduce the social and financial costs of workplace injury and illness.

Executive Summary

Our association believes the current short term no fault statutory scheme and common law system is advantageous to the Queensland economy. This compensation model has consistently outperformed compensation models in other jurisdictions. Although there is a need for some reform within the scheme, we would caution all stakeholders that any proposed changes should not eventually lead to a change of the existing model to long term or pension based systems as these models appear to be economically and socially unsustainable.

The Queensland system, however, needs to evolve and become more focused on positive outcomes for workers and employers. This should occur by restoring the stakeholder balance and engaging medical, allied health and educational providers to participate in developing a scheme where all stakeholders contribute to a coordinated response to reducing the social and financial cost of work place injury.

Positive scheme messages need to be developed that promote injury prevention, the health benefits of work, the advantages of employer based injury management and a focus towards better life outcomes for injured workers.

To improve the overall scheme performance, injury prevention and injury management can no longer be developed in separate silos and there should be a united position to ensure that whilst injury prevention has the highest priority it should not be at the expense of responsive and effective injury management.

Our Queensland association has been at the forefront of promoting sustainable return to work, better outcomes for injured workers, employer based injury management and achieving better outcomes by linking safety, health, wellness and injury management in the workplace.

The initiatives undertaken by ASIEQ to promote these important messages have been gratefully supported by Workplace Health and Safety, Q-COMP, WorkCover Queensland and many other prominent stakeholders within the scheme.

Our association's commitment to building stronger relationships, developing better business practices and improving work place culture continues with our fifth employer based injury management conference in March 2013 aimed at "The Evolution of Injury Management towards Better Business Practices". As the conference will occur shortly after the announcement of the review findings, we extend an invitation to the Queensland Government to nominate a prominent government representative to open the conference and deliver a key note address.

This report and its recommendations have been formulated with a view to improving the scheme by introducing:

- A positive scheme focus and direction;
- A five year plan in regards to the evolution of injury management
- Greater flexibility in insurance and injury management arrangements

Acknowledgements

1. *The Honourable Jarrod Bleijie – Attorney General and Minister for Justice*

ASIEQ would like to acknowledge the Minister for his early commitment to injury prevention, responsive injury management and better return to work outcomes in his first press release in regards to bringing forward the Workers' Compensation review.

This statement provides a positive direction for the future and more importantly links injury prevention and injury management together in the quest for better outcomes for workers and employers.

We also acknowledge the initiative to bring forward the 2013 review of the scheme.

2. *Q-COMP – Workers' Compensation Regulatory Authority*

ASIEQ would like to acknowledge the commitment of Q-COMP staff to improving their operations whilst building stronger relations with stakeholders. The drive by Q-COMP management to ensure compliance through the promotion/support of continual improvement processes and encouragement to deliver better outcomes is an essential element in developing the Queensland scheme.

Our Association has been a proud sponsor of all Q-COMP Return to Work Awards as it has a strong commitment to recognising the valuable work of Rehabilitation & Return to Work Coordinators and the achievements of Injured Workers who have overcome significant injuries to return to work.

We also appreciate Q-COMP's contribution to promoting and participating in joint injury management conferences aimed at promoting employer based injury management strategies to achieve better outcomes for injured workers.

In announcing the new appointments to the Q-COMP Board we welcome the Minister's statement of 28 June 2012,

"The new members will bring strong business and legal experience to the table, which will ensure a high performing, competitive workers compensation scheme for the State. This changing of the guard is an opportunity for the Government to better meet the needs of businesses and address increasing premiums."

3. *WorkCover Queensland*

It is important to acknowledge the significant challenges that have been faced by WorkCover in regards to the effects of the global financial crisis and escalating common law claims that have arisen over the past several years.

In the face of increased advertising by legal practitioners competing for business and market share there has been a greater awareness and willingness to pursue common law action for even the most minor of injuries.

The environment has certainly changed significantly with franchised legal practices, No Win No Fee promotions and more sophisticated marketing by legal practitioners occurring across all forms of media becoming the norm.

Our association also extends our appreciation to WorkCover for their efforts in building stronger relationships and their contributions to joint injury management conferences aimed at encouraging employer based injury management strategies and better return to work outcomes. We also acknowledge their efforts to improve educational opportunities within the state with their support of the Personal Injury Education Foundation (PIEF).

4. Department of Workplace Health and Safety

It is important to acknowledge the assistance provided by staff from this Department who have contributed to jointly running injury management conferences. These conferences have been promoting the importance employer based injury strategies that link safety, health, wellness and injury management in the workplace. These conferences have had a positive influence on the scheme and mirror the Minister's commitment to injury prevention and responsive injury management to achieve better outcomes.

This Department appears to have lost an opportunity to promote a clear identity and safety message under the requirement from the past government to promote its initiatives under a common Queensland logo. A Safe Work Queensland name and identity would certainly improve the ability to promote a strong safety message whilst mirroring the overarching Safe Work Australia message or reflecting other jurisdictional agencies.

Addressing the terms of references

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

In announcing the Government's plans to bring forward the workers' compensation review the Attorney General and Minister for Justice the Honourable Jarrod Bleijie made a commitment to a scheme that promotes injury prevention, responsive injury management and better return to work outcomes.

Having regard to the stated preferences and the need for better business practices to evolve to achieve such outcomes, ASIEQ would recommend:

Recommendation 1

Section 5 (1) (b) encouraging improved health and safety performance by employers.

Be amended to:

Section 5 (1) (b) encouraging improved health, safety and injury management performance by employers.

Recommendation 2

Section 5 (4) should be amended to include a new subsection:

5 (4) (f) Provide for flexible employer based injury management arrangements suited to the particular needs of industry.

Both these recommendations will assist with the promotion and development of improved workplace practices focused on injury prevention and responsive injury management in the workplace. At this stage it appears the scheme does not provide flexible insurance arrangements suited to the particular needs of industry.

In regards to the scheme meeting the current objectives we would highlight the anomaly of "Section 5 (4) (e) provide flexible insurance arrangements suited to the particular needs of industry". This section provides great scope for the development and promotion of flexible insurance arrangements in Queensland.

However besides self-insurance, there appears to be only one other arrangement for Queensland employers. With the introduction of a 2000 person threshold/barrier to self-insurance and government policy preventing government departments from applying for self-insurance the only flexible insurance arrangement appears to have been nullified.

Section 5 (5) of the Act highlights that it is in the state's interest that industry remain locally, nationally and internationally competitive. If artificial barriers are built to prevent any flexibility within the scheme the state's ability to be competitive is compromised.

Employers are looking for options that best suit their business needs and it is important that the scheme provides greater flexibility in insurance and injury management arrangements.

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

The Queensland workers' compensation scheme compares favourably to scheme arrangements in other jurisdictions in regards to the benefits that are paid to injured workers and the cost of the scheme to employers. There are significant economical benefits to Queensland under the current short term statutory and common law scheme.

The Association would prefer that the current scheme be maintained and should be protected during harmonisation processes.

There are significant risks for the Queensland Worker's Compensation Scheme and the Queensland economy to move towards total harmonisation with other state schemes. The Queensland scheme has historically outperformed other state jurisdictions and therefore, harmonisation could remove the significant benefits the current scheme provides and also place a significant burden on Queensland employers and the overall economy.

Our Association would like to see greater representation from self insured employers at state and national levels during the formulisation and development of national harmonisation strategies and processes.

There are significant opportunities to create national consistency especially in regards to injury management and licensing for self insured employers without negatively impacting on the Queensland scheme.

Multistate, national and international employers would appreciate the opportunity to participate in the development of consistent injury management processes as it is believed that efficient and effective injury management would significantly reduce the social and financial cost of injury and illness in Australia.

Recommendation 3

Strive for national consistency in regards to injury management and licensing for self insured employers with the view to improving outcomes whilst minimising any negative impacts on the Queensland scheme.

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

It is important to have a competitive and stable workers' compensation environment in Queensland that provides flexible and cost effective insurance and injury management options for employers.

It is important to ensure the scheme remains competitive with other jurisdictions to encourage investment in the state and also provide a stable platform for current employers to develop and promote growth within the state.

There is no prudential risk to the scheme if more employers are allowed to take up self insurance. Primarily because the Regulatory Authority holds unconditional bank guarantees in excess of each individual self-insured employers annually assessed outstanding liabilities and each self insured employer must maintain appropriate reinsurance to cover any catastrophic risk.

However, our experience indicates there is not a significant appetite for self insurance within the Queensland scheme and there is a significant preference for greater flexibility in other insurance and injury management arrangements. If the premium system provided greater incentives and acknowledgement for investment into safety, health and injury management there would be very little call for self insurance. In Western Australia where an employer with one employee can technically self insure there has been a stable self insured environment for many years. It appears employers would prefer to remain within a competitive insurance environment with flexibility in insurance and injury management arrangements.

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

Our association would recommend caution in regards to determining whether current statistics indicate the implemented reforms have addressed the growth in common law claims. As common law claims can be lodged up to three years after the date of injury it will be some time before trends will emerge that truly reflect whether the reforms have stemmed the growth in common law claims.

It should be noted that several of the amendments were designed to re-establish the previously held positions that were affected by court decisions.

For example:-

The amendment to the Queensland Workplace Health & Safety Act 1995 to confirm that a breach of any of the provisions of the Act or Codes of Practices made pursuant to the Act and Regulations does not give rise to a civil right of action for damages for injury resulting from such breach served to correct a legal anomaly created by the Queensland Court of Appeals decision in Bourk v Power Serve Pty Ltd & Anor [2008] QCA 225 that employers had a 'strict liability'.

While the amendment removed a worker's right of action under the Workplace Health and Safety Act 1995, it did not affect any other cause of action the worker may have in relation to his or her injury, such as a breach of a duty of care in tort (negligence) or in contract.

The amendment only affected those workers who are unable to establish that their employer was negligent in tort or had breached their duty of care under contract.

In addition, the amendment was consistent with other Australian jurisdictions, the national Model Work Health and Safety Act and the Electrical Safety Act 2002.

Rarely have the Queensland Courts dismissed a Claimant's claim for failing to prove a breach of duty in negligence or in contract either before the Queensland Court of Appeals decision in Bourk or since.

Our Association believes that this is an issue where further monitoring is required to establish the full effects of the 2010 amendments before decisions are made.

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

The current legislated self-insurance arrangements are overly restrictive for employers that aspire to obtain a self-insurance licence and are sometimes inflexible in their ability to cope with the changing business arrangement that occur in today's society.

Before commenting on these issues it is important to note the following points:

- Evidence from around the world indicates that better outcomes are achieved when employers develop injury management systems that:
 - meet their own unique organisational needs; and
 - are focused on getting individuals better, rather than claims management

Self insured employers are in the best position to focus on developing unique injury management systems that focus on better outcomes not insurance.

- ASIEQ is an association of self insured employers; our membership is made up of employers that have been striving for better outcomes.
- Our association does not actively promote self insurance as it is our member's commitment to safety, health and injury management that leads to the improvement in overall outcomes.
- A performance comparison between WorkCover outcomes and self insured employer outcomes is clearly not a fair and equitable comparison. It would be unwise to make comparisons with WorkCover as they are managing a significantly different portfolio of claims with employers that are not required to meet the high standards in safety, health and injury management that are required under a self-insurance licence.
- Because of the different industries, workplace cultures and risk profiles it is even difficult to compare the performance between individual self insured employers which is potentially why Q-COMP focuses on continual improvement processes when regulating self insured employers.
- As self insured employers evolve and strive for better outcomes the areas of conflict that are actively promoted by other stakeholders against self-insurers are actually reducing.
- Self insured employers are proactively promoting early resolution and integrated injury and claim management strategies that are improving outcomes and reducing time frames for managing both statutory and common law claims.
- As self insured employers bear the full cost of all workplace injuries there are significant financial drivers to improve outcomes.
- Self insured employers whilst not paying premiums still contribute proportionately with other employers to the overall running of the Queensland scheme through annual levies paid to Q-COMP.

- When self insurance was introduced into Queensland in the 1997 legislation the average premium was approx \$2.15. Whilst there was a significant uptake in self-insurance licences and also significant increases in benefit levels to injured workers over the last 13 years the average premium rate is significantly less than it was in 1997. The scheme appears to have been able to improve with the introduction of self-insurance.
- The current comparatively low premium rates that exist in the Queensland scheme acts as a deterrent to self insurance. The option of self insurance acts as incentive to maintain competitive premiums for all Queensland employers.
- Self insurance allows the government to transfer significant risks from the general scheme and the states exposure to future liability to reinsurers and self insured employers.
- Self insured employers in Queensland have had a significant and positive influence on the scheme.

Self insurance is considered a vehicle for managing the cost of workplace injuries that compliments or enhances an existing culture and environment; to provide increased opportunities or incentives to prevent injuries and/or improve outcomes for injured workers.

These opportunities should not be restricted by artificial employee limits when there are sufficient performance requirements that ensure that only companies that have significant financial resources and a strong commitment to safety, health and injury management are able to achieve and maintain a self-insurance licence.

The majority of other Australian workers' compensation jurisdictions have removed the employee limit as a threshold for self insurance and we would recommend the Queensland scheme take appropriate action to ensure it remains competitive with other states.

Recommendation 4

Remove Sub-Section 71 (1) (a) the number of fulltime workers employed in Queensland by the employer is at least 2000;

The objective of flexibility in insurance arrangement is also compromised with the requirement for a group employer that all related bodies corporate that employ in Queensland must be included in the licence.

In today's contemporary business world large corporations regularly form joint venture operations or dual merged entities to undertake large capital projects within the state. These business ventures are often compromised because of the requirement that all participants may have to fall under a self-insurance regime or alternatively be excluded from a self insurance licence as the venture itself does not meet the 2000 employee limit.

The scheme needs to have greater flexibility in regards to these business arrangements as it will improve opportunities for investment in the state. Any amendments would need to provide greater flexibility for businesses to choose between self-insurance or cover under a WorkCover policy when joint venture or other arrangements exist.

Once again other jurisdictions provide greater flexibility in regards to the business needs of employers. It is important to note that large national and international corporations have been prevented from self insuring in this state because of the employee limit even though they operate self-insurance operations within other states and have more than 2000 employees across Australia.

If Queensland is to remain competitive in regards to corporate investment in the state it should provide competitive and flexible arrangements for employers that prefer to manage their own business risks through a self insurance licence arrangement.

Recommendation 5

Amend Section 69 of the legislation to provide greater flexibility, having particular regard to joint venture arrangements, dual-merged entities and other business arrangements.

The section could potentially require only 100% owned related bodies corporate to be included with discretionary powers to consider the inclusion or exclusion of business structures such as joint venture or other arrangements.

The section should also provide discretionary powers to exclude related bodies corporate that do not fall within certain parameters.

**(vi) The recommendations of the Structural Review of
Institutional and Working Arrangements in
Queensland's Workers' Compensation Scheme**

The structural review of institutional and working arrangements appears to have been limited by the scope of the terms of reference and the appetite for structural or legislative change that might be required to improve the scheme. The association did respond to the recommendations of the review and it is not the intent of this submission to revisit individual elements of our submission however the following comments have been included.

The development of a tripartite agreement between Q-COMP, WorkCover and Workplace Health and Safety, whilst a positive step forward in bringing together injury prevention and responsive injury management in some areas, it did not provide a comprehensive and formalised state position. In particular no formalised position appears to have been established with all state safety regulators (i.e. Natural Resources, Mines and Energy, Transport).

It would appear that currently a portion of all premiums and self insurance levies are paid solely to Workplace Health and Safety even though they are collected from employers that work hand in hand with other safety regulators.

There are still significant opportunities to establish a more comprehensive and integrated scheme that links injury prevention and responsive injury management across all agencies.

Our association whilst recognising the importance of five year reviews would encourage the development of a five year plan especially in regards to planning the evolution of injury management within the state.

Overview and recommendations on additional issues

Evolution of Injury Management within Queensland

Injury Management within the state started to develop with the recognition of rehabilitation costs in the early 1990's and the formal introduction of "Rehabilitation Coordinator" in the 1996 legislation. However the development of injury management within the legislation and the scheme appears to have stalled as significant attention was paid to the development of a statutory pre-proceedings process in regards to the lodgement of common law claims. Whilst important in reducing the use of the Queensland Courts to resolve disputes this process was continually reviewed to improve and streamline the technical difficulties that arose.

The scheme focus was inadvertently directed towards common law outcomes with legal representatives gaining greater representation at stakeholder forums as the issues focused on the resulting increase in common law claims and costs. Even though the 2003 legislation extended the name of the Act to include rehabilitation there was very little external promotion of the benefits of rehabilitation or injury management to reduce scheme costs.

In recent years the discussion has moved to achieving better injury management outcomes for injured workers to reduce the social and financial cost of workplace injury. However the stakeholder balance needs to be restored in regards to the development of the scheme and injury management. Stakeholder forums should maintain a balance of employer and worker representatives and encourage the involvement of injury management specialists including rehabilitation providers, educational institutions and medical professionals to ensure all stakeholders are focused towards improving the scheme through better outcomes for injured workers.

To this end the Association would recommend the development and promotion of positive scheme messages in addition to the common return to work message. The association would also recommend the development of a strategic five year plan in regards to the evolution of injury management.

Recommendation 6

The authority, in consultation with stakeholders, develop and promote at least five positive injury management themes/messages that provide an overarching umbrella for stakeholders to use and reinforce in the quest for better outcomes. These could include the health benefits of work, working your way back to life, employer based injury management, sustainable return to work, and early intervention and resolution being the key to better outcomes. The importance is to focus on better life outcomes for injured workers.

Recommendation 7

That consideration is given to the development of a five year plan in regards to the evolution of injury management within the state. The development of the plan would involve relevant experts from the medical, allied health, rehabilitation specialists and educational institutions. In developing the plan consideration could be given to

various injury management models and the benefits of employer based injury management strategies that would improve early intervention and resolution initiatives that lead to better outcomes.

Restricting access to Common Law through a permanent impairment threshold

There has been significant debate on the introduction of a permanent impairment threshold to restrict access to common law since significant increases in common law claims led to a submission to the Minister by the past WorkCover Queensland Board to introduce a 10% or 15% threshold.

There has been much debate in regards to the appropriate level of the threshold and the potential adverse consequences for workers, employers and the scheme since that time.

Our members have differing views in regards to whether a threshold should be introduced and in the event a threshold were to be introduced there are varying views in regards to what should be the appropriate threshold limit.

Our members are united in their view that the Queensland short tail statutory scheme and common law scheme should be protected. The introduction of any significant threshold (10% to 15%) could potentially place the short tail nature of the Queensland scheme at risk. Of equal concern, the introduction of a 0% or 1% threshold would introduce significant administration and increase referrals to the medical assessments tribunals which may reduce the effectiveness of the overall scheme.

It is therefore our associations view that the introduction of a threshold should be considered with extreme caution and if the committee determines a threshold is required then a minimum 5% threshold would appear to be the most appropriate threshold.

However, having regard to the possible long term effects on the scheme, the inability to clarify whether the 2010 amendments are taking effect, and, with the recent increases in the commitment to injury management it may be a decision that should be delayed at this time.

In the interim an independent review of 0% permanent impairments by an educational institution should be conducted to develop a strong understanding as to why there are significant common law claims emanating from injuries where no work related impairment was sustained.

Recommendation 8

To appropriately consider whether a common law threshold should be introduced: - It is recommended that an independent review of 0% impairments should be conducted to develop a full understanding of why there are significant common law claims emanating from injuries where no work related impairments were assessed. At the completion of the review further consideration should be given to the effects of the 2010 amendments in reducing common law claims before a decision is made in regards to a common law threshold.

Managing the legal costs associated with a Notice of Claim

For the Queensland scheme to be effective there needs to be a clear understanding of all costs associated with the scheme and payments that are made to all beneficiaries within the scheme. Currently there is no clear understanding of the costs that are being paid to plaintiff lawyers to represent injured workers as they advance common law cases under "No Win No Fee" cost agreements. Estimates vary from \$120 million to \$200 million a year.

These costs which were predominantly paid directly by insurers to the plaintiff lawyers have now been transferred to the injured worker. This gives the impression that workers are receiving a greater percentage of the total amount paid in compensation. However workers may now be disadvantaged by having to pay large legal bills that have been inflated because of the alleged speculative nature of proceeding with a common law claim.

The interests of injured workers need to be protected and the costs to the scheme need to be known. As it appears that attempts to obtain details of costs paid have been unsuccessful, it is suggested that a standard stage billing rate be developed and gazetted to cover the lodgement of a notice of claim through to the initial conference.

As most cases are resolved at or before the initial conference the worker would know the exact costs of running a case to conference before a case was commenced. The fee would see the reduction in potential unnecessary investigations and promote early resolution strategies with insurers. This would protect the worker in regards to the extent of costs that could be charged and the worker would be in a better position to consider their options after hearing both positions at a conference.

If agreement isn't reached at conference the worker's solicitor could then provide an individual cost agreement having heard the insurer's position and would then be able to appropriately advise on the costs to advance the case through the legal process if necessary.

Recommendation 9

In relation to costs charged to workers by legal representatives in processing a notice of claim: It is recommended that a maximum stage billing fee be introduced for the lodgement of a notice of claim through to the holding of the initial conference. This would protect the worker in regards to cost agreements and provide incentives to strive for early resolution of cases.

Psychological Claims

There's a need to review the provisions relating to primary psychological claims which have been on the increase over recent years. Currently there are significant resources required to investigate and review allegations that relate to numerous minor or innocuous events that may have occurred over numerous months or years.

The rejection rate for these types of claims is in excess of 50% when rejection rates for physical injuries are less than 5%. There are concerns that the original intent of the provision 32(5) is being slowly eroded through court decisions.

Employer associations generally are concerned about the amount of time that is expended and the business interruptions costs that occur in the ordinary investigation of these types of cases. There is a need to consider whether the provisions relating to psychological conditions need to be strengthened at this time.

Recommendation 10

The Association would recommend a review of the provisions relating to primary psychological injuries to determine whether they can be strengthened. The inclusion of a requirement that employment has to be the major significant contributing factor or the need to consider predisposition of the claimant to psychological conditions may be warranted.

Solar Related Claims

Concerns have been raised in regards to the increasing number of and the extent of cover being provided for solar related injuries. There is a need for recognition of a latency period clarifying liability only for exposure as a 'worker' in Queensland and limiting entitlements to a certain period after retirement.

Recommendation 11

In relation to solar claims, review the current provisions to determine whether there is a need for greater recognition of the latency period for these types of injuries and clarify liability for exposure as a 'worker' in Queensland. In particular recognition should be given to the non work related exposure that occurs prior to employment and externally to employment.

Latent onset Injuries

Whilst recognising and acknowledging the importance of the provisions relating to latent onset injuries the implementation of increased entitlements in this area over the past several years is not commensurate with normal compensation principals of indemnity. The increase in lump sums is not reflective of actual loss when claims are lodged just before or after retirement from employment.

Currently lump sums contain a significant economic loss component that whilst reasonable when a worker is in employment or forced to leave employment because of a condition, becomes unreasonable when a worker is being compensated for an economic loss that does not exist. The anomaly now sees statutory entitlements far exceeding common law entitlements which would indicate the statutory entitlements are not commensurate with compensation principles.

Recommendation 12

In relation to latent onset injuries - review the current provisions in regards to lump sum entitlement to ensure they are commensurate with actual economic loss in regards to incapacity for employment as a result of the condition.

Reducing unnecessary costs associated with bank guarantees in certain cases.

Whilst members recognising the need for bank guarantees and accepting the 150% requirement in regards to small estimated claims liabilities which may have volatility, the 150% requirement becomes excessive when applied to large stable claim portfolios that have significant outstanding liabilities.

For example, an outstanding liability of \$10 million dollars requires a bank guarantee of \$15 million. It is our contention that as the claims portfolio grows that there is less risk associated with the variability or accuracy of the estimated outstanding claims liability. Therefore the bank guarantee requirements should reduce on larger claims portfolios.

Recommendation 13

Amend Section 84 bank guarantee or cash deposit so the required bank guarantee is 150% of the first \$10 million of the estimated outstanding liability and 120% for the estimated claims liability above this amount.

Reducing Administration in regards to Licence renewals

Whilst recognising Q-COMP's initiatives to reduce the administration in regards to licence renewals, our members have noted a move to six year licences in other jurisdictions. A relaxing of the licence provisions to allow a six year licence period would appear appropriate.

Recommendation 14

Having regard to the licence renewal period, amend section 78(2) to allow a licence to be extended for a period of no more than six years.

Issues for further discussion

The following issues have been raised by our members, however, due to the shortness of time in which to canvas numerous issues we are not in a position to provide recommendations; however, these issues should be considered by the committee.

Journey Claims

As far back as the Kennedy inquiry in 1996 there have been calls for journey claims to be removed from the legislation. This issue has been treated differently across all workers' compensation jurisdictions based on the availability of other institutional arrangements or the financial state of the scheme; e.g. the NSW scheme has recently made changes in this regard.

Self insured employers are required to bear the full cost of journey claims where employers with WorkCover policies share the burden of these claims with payments being made from the central fund with no impact on an individual employer's experience based premium.

With no opportunity to prevent these types of injuries, it is a significant impost to self insured employers when injuries occur on the journey to or from work. With the courts broadening the scope of cover provided, the journey has been extended to cover all types of activities unrelated to the journey or employment. There is a consensus that there is a need to strengthen the provisions and open the discussion as to how journey cases as a whole should be managed.

Similar issues are also occurring in regards to recess injuries away from work and this should also be considered as part of the discussion.

Safety audits for Self Insured Employers

The committee should consider whether the current safety audit requirements for self insured employers are proving beneficial in regards to reducing the incidents of injuries in the workplace. If this is the case, similar requirements should be promoted in all employers within the scheme.

Our members have found the safety audit requirements are restrictive and inflexible as most self insured employers have designed safety systems in keeping with the needs of their own unique environments and commensurate with risks associated with their particular industry. These systems are continually reviewed and updated in accordance with continual improvement processes and may reflect higher national or international standards.

The secondary audits are proving to be additional impost on resources that potentially are being performed as a licence requirement with little effect of improving safety. Greater emphasis could be given to recognising internally developed and specific safety audit processes.

Observations in regards to increasing legal activity and mitigation issues

Our members are concerned in regards to the increasing involvement of legal representatives in the statutory claim stage. As competition for business increases, solicitors are becoming actively involved in the statutory environment for the purpose of developing a common law claim or assisting workers with the processing of statutory claims that are not in dispute. Requests for permanent impairment assessments are being made long before rehabilitation has been completed and well in advance of where medical advice would consider a permanent impairment assessment warranted.

The concern is that the competing priorities impacts on the ability of the employer to facilitate a sustainable return to work. This is one of the unfortunate aspects of a common law system as sometimes the desire to obtain higher financial compensation sometimes promotes a disincentive to mitigating ones loss by participating in rehabilitation directed towards a return to sustainable employment and also maintaining that employment.

These issues are difficult to contain through legislation with the current mitigation provisions being difficult to enforce and considered to be ineffective when it comes to seeking judicial application. It is the motivation of the worker that has the greatest impact on whether a worker successfully returns to sustainable employment and as the system relies on the workers self reporting this is a difficult area to address.

It is clear that 'everybody wins' when a worker returns to sustainable employment. The health benefits of work need to be recognised by all stakeholders as we focus on better life outcomes for injured workers not financial outcomes.

This may need to be addressed through stakeholder education and clarifying roles and responsibilities during the statutory claim, however stronger mitigation provisions may be necessary.

Summary of Recommendations

Recommendation 1

Section 5 (1) (b) encouraging improved health and safety performance by employers.

Be amended to:

Section 5 (1) (b) encouraging improved health, safety and injury management performance by employers.

Recommendation 2

Section 5 (4) should be amended to include a new subsection:

5 (4) (f) Provide for flexible employer based injury management arrangements suited to the particular needs of industry.

Recommendation 3

Strive for national consistency in regards to injury management and licensing for self insured employers with the view to improving outcomes whilst minimising any negative impacts on the Queensland scheme.

Recommendation 4

Remove Sub-Section 71 (1) (a) the number of fulltime workers employed in Queensland by the employer is at least 2000.

Recommendation 5

Amend Section 69 of the legislation to provide greater flexibility, having particular regard to joint venture arrangements, dual-merged entities and other business arrangements.

The section could potentially require only 100% owned related bodies corporate to be included with discretionary powers to consider the inclusion or exclusion of business structures such as joint venture or other arrangements.

The section should also provide discretionary powers to exclude related bodies corporate that do not fall within certain parameters.

Recommendation 6

The authority, in consultation with stakeholders, develop and promote at least five positive injury management themes/messages that provide an overarching umbrella for stakeholders to use and reinforce in the quest for better outcomes. These could include the health benefits of work, working your way back to life, employer based injury management, sustainable return to work, and early intervention and resolution being the key to better outcomes. The importance is to focus on better life outcomes for injured workers.

Recommendation 7

That consideration is given to the development of a five year plan in regards to the evolution of injury management within the state. The development of the plan would involve relevant experts from the medical, allied health, rehabilitation specialists and educational institutions. In developing the plan consideration could be given to various injury management models and the benefits of employer based injury management strategies that would improve early intervention and resolution initiatives that lead to better outcomes.

Recommendation 8

To appropriately consider whether a common law threshold should be introduced:- It is recommended that an independent review of 0% impairments should be conducted to develop a full understanding of why there are significant common law claims emanating from injuries where no work related impairments were assessed. At the completion of the review further consideration should be given to the effects of the 2010 amendments in reducing common law claims before a decision is made in regards to a common law threshold.

Recommendation 9

In relation to costs charged to workers by legal representatives in processing a notice of claim: It is recommended that a maximum stage billing fee be introduced for the lodgement of a notice of claim through to the holding of the initial conference. This would protect the worker in regards to cost agreements and provide incentives to strive for early resolution of cases.

Recommendation 10

The Association would recommend a review of the provisions relating to primary psychological injuries to determine whether they can be strengthened. The inclusion of a requirement that employment has to be the major significant contributing factor or the need to consider predisposition of the claimant to psychological conditions may be warranted.

Recommendation 11

In relation to solar claims, review the current provisions to determine whether there is a need for greater recognition of the latency period for these types of injuries and clarify liability for exposure as a 'worker' in Queensland. In particular recognition should be given to the non work related exposure that occurs prior to employment and externally to employment.

Recommendation 12

In relation to latent onset injuries - review the current provisions in regards to lump sum entitlement to ensure they are commensurate with actual economic loss in regards to incapacity for employment as a result of the condition.

Recommendation 13

Amend Section 84 bank guarantee or cash deposit so the required bank guarantee is 150% of the first \$10 million of the estimated outstanding liability and 120% for the estimated claims liability above this amount.

Recommendation 14

Having regard to the licence renewal period, amend section 78(2) to allow a licence to be extended for a period of no more than six years.