

## **Finance and Administration Committee inquiry into the operation of Queensland's workers' compensation scheme**

**Submission by the Office of Fair and Safe Work Queensland, Department of Justice and Attorney General.**

### **Introduction**

Some submissions to the Finance and Administration Committee inquiry into the operation of Queensland's workers' compensation scheme (the Inquiry) will make specific comment or recommend changes to the structure of the workers' compensation scheme in line with the following terms of reference:

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

While not wanting to comment on specific policy considerations, the Office of Fair and Safe Work Queensland (OFSWQ) considered it important to inform the Inquiry of the possible options for a structural realignment of the agencies responsible for the regulation and administration of the scheme to reduce duplication, overlap and reduce costs. In presenting the identified options, OFSWQ is not advocating a preferred option.

### **Current Structure of the Scheme**

Since 1 July 2003, Queensland's workers' compensation scheme has consisted of three parts:

- Q-COMP established on 1 July 2003 under the *Workers' Compensation and Rehabilitation Act 2003* (the Act) to regulate insurer (WorkCover and self-insurers) compliance with the Act. Q-COMP undertakes reviews of insurer decisions, manages appeals against review decisions, supports administration of medical assessment tribunals, provides rehabilitation advisory services and administers return to work programs (employs 107.8 FTE staff). Q-COMP has a Board of management of up to seven persons established by the Act;
- WorkCover Queensland is the exclusive provider of accident insurance for work-related injuries in Queensland, with the exception of self-insurers. WorkCover Queensland insures more than 150,000 employers and manages in excess of 92,000 statutory claims and 3,800 common law claims. WorkCover Queensland covers 2.1 million workers which represents approximately 93 per cent of all Queensland workers (employs 803 FTE staff). WorkCover has a Board of management of up to seven persons established by the Act; and
- The Department of Justice and Attorney General (DJAG) through the OFSWQ provides policy advice to the Minister on workers' compensation matters. It develops and maintains policy and legislative frameworks for workers' compensation. The department also has as one of its primary functions 'injury prevention' by developing and implementing legislative, compliance and an education/awareness framework for work health and safety and electrical safety

(employs 586 FTE staff). Workplace Health and Safety Queensland (WHSQ) and the Electrical Safety Office (ESO) both have Advisory Boards reporting to the Minister, which are established by legislation.

### **Scheme Funding**

The Queensland workers' compensation scheme is primarily funded by employer premiums, investment returns and levies on self-insurers.

**Q-COMP** - is funded by levies on WorkCover Queensland and self-insurers. WorkCover provides the bulk of the funding (89 per cent) with self-insurers funding the balance (11 per cent). In 2010-11 Q-COMP had income of \$29.353 million and expenditure of \$29.257 million.

**WorkCover Queensland** - is funded by investment returns and employer premiums. In 2010-11 WorkCover had income of \$1.475 billion from premiums and investment returns (\$1.136 billion from premiums, \$339 million from investments and other income).

**Department of Justice and Attorney-General, Workplace Health and Safety Queensland** – receives funding from the Consolidated Fund (\$25.583 million estimated actual in 2011-12) and user charges. The department also receives funding from WorkCover and Q-COMP via a grant for the prevention of injury to workers. In 2012-13 WorkCover provided funding of \$46.804 million and Q-COMP \$5.814 million to the department.

**Department of Justice and Attorney-General, Electrical Safety Office** – is funded by an electrical safety contribution which is calculated using the current year contribution, multiplied by 0.75 times wage growth of ESO staff and 0.25 times CPI and then multiplied by the growth in the National Meter Identifiers. This allows for a growth factor based on the number of premises with an electricity meter. For 2011-12 the total budget is \$17M, comprising \$12.9M from the electrical safety contribution and \$4.1M from user charges.

### **National Competition Policy Review**

The decision to structure the Queensland scheme in the way outlined above results from a legislative review of the *WorkCover Queensland Act 1996* by the Queensland Government in 2000. The review followed a decision in 1995 by all Australian Governments to implement National Competition Policy (NCP) reforms aimed at developing a more open and integrated Australian market. In particular, the measures aimed to limit anti-competitive conduct and remove the special advantage previously enjoyed by government business activities.

The review report made 14 recommendations, all of which were adopted by government. Most recommendations advised retaining current arrangements, with the only significant change being to establish Q-COMP as a statutory body independent of WorkCover.

The Public Benefit Test conducted as part of the review process recommended that, in the interests of transparency and in line with NCP principles, regulatory and commercial functions be completely separated. Key features of the approved model included:

- the repeal of the *WorkCover Queensland Act 1996* and provision for new legislation to provide for the separate delivery and regulation of the workers' compensation scheme;
- retaining the public monopoly for the Queensland workers' compensation system;
- WorkCover's commercial and regulatory functions be formally separated;
- Q-COMP becoming a separate entity;
- maintaining WorkCover as a fully commercial statutory body; and
- centralising policy and legislative development functions within the department of Industrial Relations (now part of DJAG).

While the NCP recommendation was for Q-COMP to become a separate entity from WorkCover to ensure independent regulation of the market, the then Government decided to arrange the scheme into three parts: WorkCover the insurer; Q-COMP the scheme regulator; WHSQ injury prevention regulator and workers' compensation scheme policy and legislation.

NCP reviews of centrally funded schemes in New South Wales and Victoria also recommended that compulsory insurance be retained, the single manager arrangement and centralised premium setting be maintained. However, these reviews did not recommend the separation of insurance and regulatory functions. As a consequence, New South Wales and Victoria have standalone organisations with responsibility for regulating both workers' compensation and occupational health and safety.

## **Scheme Arrangements Throughout Australia**

Queensland is one of five Australian jurisdictions with a clear separation of responsibilities for workers' compensation and work health and safety functions and services. A full comparison of scheme arrangements in other jurisdictions is provided in **Attachment 1**.

Four jurisdictions (New South Wales, Victoria, Commonwealth, Australian Capital Territory) operate an amalgamated model with one entity responsible for both workers' compensation and work health and safety. Of these four, only Comcare operates a truly "one stop shop" in which one agency (with policy and regulatory oversight by the portfolio department and a statutory commission, respectively) delivers work health and safety and workers' compensation services.

The state and territory schemes badged as single entities (NSW & Victoria) do not actually deliver claims management and rehabilitation services; these are delivered by private insurers.

In structural terms, the Queensland scheme most resembles the Commonwealth scheme with its separation of functions and powers, government control over policy, and a publicly owned service provider.



Like Comcare, Queensland is a centrally funded scheme. In centrally funded schemes, a single public insurer performs most, if not all, of a workers' compensation insurer's functions from premium setting, claims management and dispute resolution.

The Western Australian, Tasmanian, Australian Capital Territory and Northern Territory schemes are completely privatised, similar to Queensland's Compulsory Third Party Motor Accident Insurance scheme.

New South Wales, Victoria and South Australia have hybrid schemes, where the public central insurer is responsible for underwriting, funds management and premium setting, with actual service delivery performed by private scheme agents. However, the South Australian Parliament is presently undertaking an inquiry which is considering if SafeWork SA should be moved from the Department of Premier and Cabinet to WorkCover SA.

Of the central and hybrid schemes, the Queensland scheme has the highest proportion of total expenditure directed to claimants and the lowest proportion of insurance operations expenses as shown in table 1.

**Table 1 – Comparisons of scheme expenditure 2009-10**

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

Source: Comparative Performance Monitoring Report 13th Edition

## **Structural Review of Institutional and Working Arrangements in Queensland's Workers' Compensation Scheme**

Many of the submissions received as part of the review of Queensland's workers' compensation scheme in 2009-10 noted that there was a lack of available information on scheme performance when compared with other workers' compensation jurisdictions. In addition to seeking increased information on the scheme performance, concerns were also raised regarding the lack of clarity around the roles of the regulator (Q-COMP) and the insurer (WorkCover). Based on these concerns, the then Government approved an independent review of institutional and working arrangements in the workers' compensation scheme.

In April 2010, Mr Robin Stewart-Crompton, who had chaired the National Review into Model OHS Laws, was appointed to conduct a *Structural Review of Institutional and Working Arrangements in Queensland's Workers' Compensation Scheme*, (the Review) with a report back by 30 September 2010.

Mr Stewart-Crompton was supported in undertaking the Review by a tripartite stakeholder reference group with representation from employer associations, unions,

the legal profession and government. In addition, 44 associations, unions, departments and insurers were consulted in formulating the Review recommendations. The Review has made 51 recommendations

The first group of recommendations address clarity around roles and functions. The Review report recommends the development of an overarching cross-agency strategy aimed at ensuring more effective prevention of work-related injury and disease. The strategy requires WorkCover, Q-COMP and WHSQ to work together with each agency's strategic or business planning taking account of the overarching strategy. The agencies will develop, where appropriate, common or complementary goals, policies and initiatives including the identification and undertaking of relevant joint activities. This group of recommendations has been implemented.

The final report concluded that the *'laws concerning workplace health and safety and workers' compensation are part of a regulatory continuum. The prevention of work-related harm is the primary objective.'*

Self-evidently, more effective prevention is in the interests of workers, businesses and the community. In this regulatory context, it has the additional benefit of reducing the incidence and seriousness of events that give rise to workers' compensation claims and affects the related processes of rehabilitating injured workers and assisting them to return to work. At the same time, appropriate premium setting positively influences the behaviour of policy holders in meeting their workplace health and safety obligations.

Within that framework, the report suggested it was possible to build on the existing linkages to strengthen the operational relationship between Q-COMP, WorkCover and WHSQ. The objective of this strengthening would be to achieve better workplace health and safety outcomes and to improve the fair, efficient and effective operation of the workers' compensation scheme.

By working better together the report concluded some of the benefits would be better cooperation, innovation, better use of resources and, where appropriate, more integrated service. This could also include improved data relating to the workers' compensation scheme with better data also assisting safety regulators and policy makers.

The review did not recommend far-reaching changes to existing arrangements, noting that "the scheme's overall design and how it operates have been relatively stable since 2003" (p 9). The review found that while agencies remain separate, there are functional connections between them, reflecting "not only the scheme's underpinning structure, but also the fact that each body requires information and advice from the others to perform its functions" (p 11).

## **Operation of the Queensland Scheme**

The *Work Health and Safety Act 2011* (WHS Act), *Electrical Safety Act 2001* (ES Act) and the *Workers' Compensation and Rehabilitation Act 2003* (WC&R Act) have overlapping objects aimed at the prevention of work-related fatalities, injuries and disease. The objects or purpose of the:

- WHS Act includes protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work;
- ES Act is directed at eliminating the human cost to individuals, families and the community of death, injury and destruction that can be caused by electricity; and
- WC&R Act includes encouraging improved health and safety outcomes, and providing fair and appropriate benefits while ensuring reasonable cost levels for employers.

While there is overlap in the objects of the legislation Workplace Health and Safety, ESO, Q-COMP (scheme regulator) and WorkCover operate as separate and distinctly branded organisations.

The existing structural arrangements do not provide the economies of scale and scope that could be achieved through greater integration. In particular:

1. the scheme in operating as three separate organisations has separate information technology systems, data analysis and modeling capability, financial and human resource arrangements, and three Boards of management;
2. all three agencies now have a presence in regional Queensland. In most cases this involves separate accommodation; and
3. due to over lapping functions in areas such as education, research, sponsorship and marketing WHSQ, ESO, Q-COMP and WorkCover have by necessity developed and implemented a Strategy aimed at strengthening the interaction and better co-ordinating their activities. The maintenance of this Strategy when approached as three distinct agencies is time consuming and resource intensive.

While the agencies have sought to strengthen interaction, the current structural separation necessitates that QCOMP focuses on regulating insurers; WorkCover focuses on its insurance business and ESO/WSHQ focus on injury prevention. This is consistent with the objects/purpose of the administered Acts.

### Options for Greater Structural Integration of the Workers' Compensation Scheme

In addition to the options listed below Q-COMP, WorkCover and the department will review back office functions such as communications, ICT, business systems, human resources and finance services to determine if savings could be achieved through more integrated arrangements.

The OFSWQ has identified three options on the issue of greater structural integration of Queensland's workers' compensation scheme:

1. **Status Quo** – under this option Q-COMP, WorkCover and WHSQ/ESO would continue to operate as standalone organisations;
2. **One Integrated Safety and Compensation Agency** – under this option Q-COMP, WorkCover and WHSQ/ESO would be formed into one standalone organisation; and
3. **Integrated Safety and Compensation Regulator** – under this option Q-COMP and WHSQ/ESO would be merged within the Department of Justice and Attorney General or alternatively established as a statutory authority outside of government.

## **1. Status Quo**

Under this option Q-COMP, WorkCover and WHSQ/ESO would continue to operate as standalone organisations. Issues around clarity of roles and functions will be addressed through the recommendations of the Robin Stewart-Crompton review such as the overarching cross-agency strategy aimed at ensuring more effective prevention of work-related injury and disease.

## **2. One Integrated Safety and Compensation Agency**

Under this option Q-COMP, WorkCover and WHSQ/ESO would be merged to create a standalone safety and compensation agency. The regulatory functions including review, appeals and Medical Assessment Tribunals would be structurally separated from the insurance/claims services and report directly to the chief executive officer. In relation to other jurisdictions, this option most closely relates to the 'one stop shop', injury prevention and workers' compensation scheme operated by Comcare.

Like New South Wales and Victoria, this option would ensure a focus on injury prevention in a coordinated and systematic manner. It would also build on the existing co-operation and collaboration between the prevention and insurance arms of the scheme. For example, the joint WHSQ/WorkCover Injury Prevention and Management Program (IPaM) has shown positive trends in terms of reducing claims and costs for employers, and overall costs to the workers' compensation scheme.

There are sound public policy reasons for maintaining separate commercial and regulatory functions to ensure truly independent regulation of the market for workers' compensation. These include ensuring transparency and improving confidence in the system. This option would not be supported by Queensland self-insurers who hold the view that there must be a clear and transparent divide between the roles of the regulator and WorkCover the insurer. It is likely to be opposed by employers and injured workers seeking reviews of claims and premium decisions on the basis that it may not be seen to be impartial.

The back office functions of the three agencies would be merged over time to achieve operating efficiencies savings. These include human resources, finance, communications, data and evaluation, regional accommodation and support.

Under this option, like most jurisdictions including Victoria and New South Wales, the cost of regulating injury prevention, injury management and compliance/insurer services would be met by the workers' compensation scheme.

While the proposal is for a standalone safety and compensation regulator, it would be possible under the proposed structure to move, in time, to a model like New South Wales and Victoria where private claims agents enter the market to provide claims management services in the Queensland scheme. However, as noted in the table above, the cost of administering insurance operations by WorkCover Queensland is significantly below that of any of the other centrally funded and hybrid schemes.

### **3. Integrated Safety and Compensation Regulator**

Under this option Q-COMP and WHSQ/ESO would be merged within the Department of Justice and Attorney General to create a safety and compensation regulator within government directly answerable to the Minister for outcomes through the Director-General. Alternatively, this option could be implemented as a statutory authority model that reports to the Minister through the chairperson of a board.

This option differs to option two in that it structurally separates the regulatory compensation functions from the insurance/claims services which were introduced in 2003 with the establishment of Q-COMP as a separate authority to WorkCover. Queensland self-insurers have long taken the view that there must be a clear and transparent divide between the roles of the regulator and WorkCover the insurer. Further, it can give reassurance to those employers and claimants seeking reviews of claims and premium decisions as it is not reliant on the operation of a 'Chinese wall' between regulator and insurer.

Under this option, like most jurisdictions including Victoria and New South Wales, the cost of regulating injury prevention, injury management and compliance/insurer services would be directly met from workers' compensation scheme revenue. Some functions of both existing regulators would be merged over time to achieve operating efficiencies and savings. These include communications, data and analysis, evaluation, regional accommodation, Consolidated Fund funding and support and some compliance activities.

While this option would involve a single safety and compensation agency, the proposal is for the structural separation of safety and compensation regulatory activities from the insurance business, as in the case of the previous option, it would be possible, to move, in time, to a private claims management model.



## Attachment 1 - Agencies responsible for overseeing workers' compensation and work health and safety in Australian jurisdictions

Jurisdiction	Policy	Premium	Claims	Internal reviews	External appeal	Work Health and Safety
New South Wales	WorkCover NSW.	WorkCover NSW.	7 private sector agents, 60 self-insurers and 7 specialised insurers.	Insurer	Workers Compensation Commission.	WorkCover Authority of NSW
Victoria	Department of Treasury and Finance WorkSafe Victoria (Victorian WorkCover Authority).	WorkSafe Victoria.	5 private sector agents and 37 self-insurers.	WorkSafe Accident Compensation Conciliation Service (ACCS)	Medical Panels Magistrates' or County Court.	WorkSafe Victoria
Queensland	Department of Justice and Attorney-General	WorkCover Queensland.	WorkCover Queensland and self insurers.	Q-COMP	Queensland Industrial Relations Commission or Industrial Magistrate, Industrial Court, Medical assessment tribunals	Department of Justice and Attorney-General
Western Australia	WorkCover WA.	Insurers subject to WorkCover WA oversight.	8 private sector insurers, 27 self-insurers (exempt employers) and the Insurance Commission of Western Australia.	Conciliation and Arbitration Services	District Court, Medical Panels	WorkSafe WA (a division of the Department of Commerce)
South Australia	WorkCoverSA.	WorkCoverSA.	1 private sector agent 67 private self-insurers Crown self-insurers	WorkCover SA	Workers Compensation Tribunal., Supreme Court, Medical panels	SafeWork SA
Tasmania	Department of Justice and WorkCover Tasmania.	Licensed private sector insurers subject to WorkCover Tas oversight.	7 private sector insurers. 11 self-insurers	WorkCover Tasmania	Workers Rehabilitation and Compensation Tribunal, Supreme Court	Workplace Standards Tasmania (a division of the Department of Justice)
Northern Territory	Department of Justice. NT WorkSafe.	Private sector insurers.	5 private sector insurers.	NT WorkSafe	Work Health Court	NT WorkSafe
Australian Capital Territory	Chief Minister's Department – Continuous Improvement & Workers' Compensation Branch	Private sector insurers	7 approved insurers. 8 self-insurers.	WorkSafe ACT	Conciliation, arbitration, Magistrates Court, Supreme Court	WorkSafe ACT (a division of the Department of Justice and Community Safety)
C'wealth Comcare	Department of Education, Employment and Workplace Relations.	Comcare.	Comcare/Self-insurers and their agents. DVA for claims relating to military service rendered before 1 July 2004.	Comcare	AAT, Federal Court	Comcare