

Department of Justice and Attorney-General

DISCUSSION PAPER

The Queensland Workers' Compensation Scheme:

Ensuring Sustainability and Fairness

February 2010

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INTRODUCTION

Purpose of a discussion paper

This discussion paper does not represent government policy but is intended as a way to generate debate and input into whether a proposed government action is the most efficient and effective way of achieving a desired policy objective.

Comment on the information presented in this discussion paper is encouraged.

How to respond to this discussion paper

The closing date for providing comment on this discussion paper is **Monday 24 March 2010**.

Written submissions should be sent to:

Mail: The Director
Workers' Compensation Policy Unit
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GPO Box 69
BRISBANE QLD 4001

Email: wcpolicy@justice.qld.gov.au

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Public access to submissions

Unless marked 'Confidential' all submissions will be treated as public documents and may be placed on the Department of Justice and Attorney-General website. Submissions treated as confidential remain subject to the provisions of the *Information Privacy Act 2009* and *Right to Information Act 2009*.

Consideration of issues raised by the discussion paper

After the public comment period closes, the Government will consider issues raised through the submissions.

Further consultation may occur to address any concerns raised by the community prior to the development of a final position by the Government.

EXECUTIVE SUMMARY

WorkCover Queensland (WorkCover), like other insurers was adversely affected by the global financial crisis over the last two financial years. This global financial crisis impacted WorkCover's investment returns detrimentally by approximately \$800 million. Notwithstanding the effects of the global financial crisis, WorkCover also incurred an underwriting shortfall over the same period of approximately \$500 million. These two factors contributed to an accumulated operating deficit of approximately \$1.3 billion before tax, which was absorbed by the established investment fluctuation reserve. It would appear that, in 2009-10, investment markets are moving to 'normal' positive returns; however, any surplus above the targeted investment return of 7.5% should ideally be directed towards rebuilding the investment fluctuation reserve so WorkCover is able to absorb the inevitable fluctuations in investment returns.

After WorkCover's 2007-08 financial results were finalised and reported, WorkCover identified a change in claim experience where the volume and cost of common law claims were increasing beyond normal inflation. This growth in common law claims and associated claims payments cannot be covered only by increasing premium and relying on increased investment returns. The expected investment return for 2009-10 will still be insufficient to cover the accelerating growth in common law claims and payments.

WorkCover appointed Deloitte to undertake a business review of WorkCover Queensland in April 2009. The aim of this review was to ensure that the whole business would be evaluated, and that any other additional drivers behind the emerging financial situation would be identified. The review analysed WorkCover's financial position and identified possible solutions to ensure it remains solvent. Deloitte identified three factors contributing to WorkCover's deteriorating financial position:

- growth in net claims expenditure, incorporating an increase in common law claim numbers in comparison to the growth of statutory claim payments and number of claims;
- income not keeping pace with net claims growth. Premiums have been kept at an average premium rate of approximately \$1.15 per \$100 of wages paid; and
- two consecutive years of substantial negative investment returns because of the global financial crisis.

Deloitte identified that the most significant increase in common law claims frequency over recent years has involved claims with lower levels of whole person impairment (WPI). Common law claims in the injury bands of 0-10% WPI accounted for 66% of common law claims and \$233 million in common law claims payments in 2008-09. The growth in the number of common law claims has been accompanied by a continuous growth in net common law claim payments following resolution. These have grown from \$274 million in 2004-05 to \$395 million in 2008-09.

From 2009-10 to 2017-18, common law claims paid have been projected by WorkCover's actuary to grow at an average compounded annual growth rate of 14.5%, based on 30 June 2009 experience. As a result of this projection, common law claims payments are estimated to account for 64% of all claims costs by 2017-18, from 41% in 2008-09. Based on the projected growth rate, total provisioning for outstanding claims liability will need to grow to \$6 billion by 2017-18, compared to \$2.3 billion in 2008-09. Based on 30 June 2009 figures, Deloitte estimated if all factors held constant, the recurrent funding gap would be in the order of \$200 million per annum.

As a consequence of the Deloitte review, WorkCover's actuary advises that, if no action were taken to address all the factors identified above, the fund will fall below its target funding ratio of 120% by 30 June 2010.. This view is based on experience to 30 June 2009.

Since 30 June 2009, WorkCover's financial position has continued to deteriorate due to further increases in common law claim numbers and payments. Deloitte projected common law payments for 2009-10 to reach \$451 million; however the experience in the first six months of this financial year indicates that the figures is more likely to be \$558 million, which is a 41 percent increase on common law payments made in 2008-09, and a 70 percent increase on common law payments made in 2007-08.

WorkCover's actuary has now conducted a mid-year valuation at 31 December 2009. This valuation indicates that the 2009-10 movement in outstanding claims liability provision will increase to \$395 million, which is \$265 million more than the amount estimated at the 30 June 2009 valuation. Time has precluded WorkCover from updating all the analysis conducted by Deloitte using this new valuation, therefore the figures presented in this report are still essentially based on 30 June 2009 results and the Deloitte report.

A financially sound WorkCover Queensland is vital for workers, employers and the Queensland economy. Only a sound fund will ensure that WorkCover can continue to fund workers' claims, while ensuring that employers continue to be adequately insured for work-related injuries for an affordable premium.

The WorkCover Queensland Board has made a number of recommendations to the Attorney-General and Minister for Industrial Relations to address WorkCover's ongoing viability. These recommendations, intended as a package include:

- progressive increases over time in the average premium rate;
- introducing a common law threshold of 10% or 15% whole person impairment (WPI) while at the same time extending common law coverage to host employers and principal contractors who have a WorkCover policy;
- increasing statutory lump sums and improving rehabilitation and return to work processes; and
- reducing the step down in weekly benefits between weeks 14 to 26 from 85% of normal weekly earnings to 80% or the federal minimum wage, and increasing step down benefits between 14 weeks to 5 years from 75% to 80% of normal weekly earnings or the federal minimum wage from 14 weeks to 5 years.

Stakeholders have made representations about the WorkCover Board's recommendations and have proposed a number of alternative options to address the volume and cost of common law claims, including:

A) :

- **Allowing common law claims only where employment was the major significant contributing factor to the injury, as well as:**
- addressing the increased difficulty faced by employers in resisting claims for damages as a result of *Bourk v Power Serve P/L & Anor* [2008] QCA 225 decision;
- increasing obligations on third parties to fully participate in the resolutions processes in the pre-proceedings process;
- allowing the court to award costs against plaintiffs whose claims are dismissed;
- increasing employer excess; and
- increasing premiums more than proposed by the WorkCover package.

B) **Excluding workers who are assessed as having 0% impairment from accessing common law as well as:**

- including other proposals from option (A) (other than major significant factor).

C) Aligning the *Workers' Compensation and Rehabilitation Act 2003* with the *Civil Liability Act 2003* by imposing caps on common law damages by:

- applying a similar damages regime as the *Civil Liability Act 2003*; as well as
- including other proposals from option (A) (other than major significant contributing factor).

The Government has committed to a process of consultation to determine the best way forward for Queensland's workers' compensation scheme.

This discussion paper is intended to provide a structure for formal consultation on options to address the increase in common law claims and claims costs, including the recommendations of the WorkCover Board as well as the alternative packages proposed, which comprise measures suggested by stakeholders to date.

BACKGROUND

Queensland's workers' compensation scheme

Queensland's workers' compensation scheme is governed by the *Workers' Compensation and Rehabilitation Act 2003* (the Act). The objectives of the Act are met through organisational arrangements consisting of insurers (WorkCover Queensland (WorkCover) and 23 self-insurers); an independent scheme regulator (Q-COMP); and the Department of Justice and Attorney General (the department) responsible for policy and legislative development.

WorkCover Queensland is the sole commercial provider of workers' compensation insurance and claims services in Queensland, managing over 89% of workers' compensation business in 2008-09 and paying out just over \$1 billion in claim payments. WorkCover is self-funded through premium income and investment returns. The WorkCover Queensland Board is accountable for WorkCover's accident insurance business, including claims management and premium setting.

The Q-COMP Board is accountable for the regulation of insurers, including WorkCover. Q-COMP also provides administrative support for the Medical Assessment Tribunals, conducts independent reviews of decisions relating to workers' statutory claims and employer premiums, maintains the scheme wide data base and monitors compliance with the workers' rehabilitation legislative provisions. The department provides advice to the Minister and other stakeholders on workers' compensation matters and conducts research and analysis to develop workers' compensation policy and legislation.

It has been a consistent challenge for governments to find an equitable balance between worker benefits, employer costs and scheme viability, with the balance frequently reviewed and adjusted. In Queensland, there have been eight reviews into workers' compensation since the early 1990s, see Attachment 1.

Scheme Overview

Queensland's workers' compensation scheme, like all other schemes in Australia, is a 'no fault' statutory scheme, i.e. a worker who is injured through work is entitled to statutory compensation. Statutory compensation includes weekly income replacement benefits while the worker is unable to work as well as cover for medical, rehabilitation and other expenses. In addition, if the worker suffers a permanent impairment from the injury, he/she may be entitled to a lump sum payment. The amount of the lump sum payment is determined according to formulae set out in the *Workers' Compensation and Rehabilitation Regulation 2003* (the Regulation). Other benefits cease once a lump sum payment is made.

Weekly benefits are paid at the rate of 100% of the amount specified in the worker's industrial instrument or 85% of the worker's normal weekly earnings, whichever is the greater. After 26 weeks, this rate steps down to 75% of normal weekly earnings or 70% of QOTE, whichever is the greater, for up to 2 years. After 2 years, the rate continues if a work related impairment of 15% or more can be demonstrated. Otherwise, the single pension rate applies (\$335.95 per week) if the injury is not stable and stationary.

Weekly benefits stop after 5 years or when the maximum compensation amount (\$244,710) has been reached or a lump sum payment has been made. This makes Queensland a 'short tail' scheme, in contrast to the 'long tail' schemes of other jurisdictions, which pay benefits for the duration of a worker's incapacity. However, Tasmania limits statutory benefits to nine years. Attachment 2 provides a comparison of the key elements of other jurisdictions' schemes.

Queensland's focus on rehabilitation and return to work has resulted in the second-highest participation in rehabilitation by injured workers in Australia, at a rate of 76%.¹ Queensland's durable return to work rate has been higher than the Australian average for some years and is currently in line with the Australian average at 75%.² Between 2006-07 and 2008-09, over 83% of statutory claims (approximately 226,000) were finalised in less than one month. A further 9% of statutory claims (approximately 24,500) were finalised within 3 months. Only 0.2% (584) of workers remained on statutory benefits after two years.

An injured worker in Queensland may also apply for common law damages if the injury was due to their employer's negligence. Queensland and the ACT are the only jurisdictions that provide unlimited access to common law (no threshold test), no cap on the amount of damages that can be awarded and limited restrictions on the type of damages that an injured worker can receive (i.e. no compensation for gratuitous care). Other Australian jurisdictions that allow the common law right to sue for injury have thresholds. However, they are long tail schemes that allow injured workers to stay on statutory benefits indefinitely i.e. for the duration of the incapacity. While common law access is available to all workers in Queensland, if the worker's work-related impairment (WRI) is less than 20%, the worker has to choose between statutory lump sum compensation or damages at common law. If the WRI is 20% or more, the injured worker can accept a lump sum payment as well as seeking damages.

In Queensland, the majority of workers' compensation claims are dealt with in the statutory scheme. In 2008-09, of the 96,043 claims were lodged, with WorkCover 96% (92,390 claims) were for statutory compensation and 4% (3,653) were for damages at common law.³ These proportions have been reasonably consistent over the last ten years.

While common law claims make up only a small percentage of claim numbers, they represent a significant part of scheme costs (41% in 2008-09). The average cost of a common law damages claim settlement (\$146,811 in 2008-09) is around 30 times higher than the average cost of a statutory claim (\$5,181 in 2008-09). Gross statutory claims payments have increased (11.3% in 2008-09), however, gross common law claims payments rose by 20% in the same period.

ISSUES

Nature of the Problem

WorkCover Queensland (WorkCover), like other insurers was adversely affected by the global financial crisis over the last two financial years. This global financial crisis impacted WorkCover's investment returns detrimentally by approximately \$800 million. Notwithstanding the effects of the global financial crisis, WorkCover also incurred an underwriting shortfall over the same period of approximately \$500 million. These two factors contributed to the accumulated operating deficit of approximately \$1.3 billion before tax, which was absorbed by the established investment fluctuation reserve. It would appear in 2009-10, investment markets are moving to 'normal' positive returns; however any surplus above the targeted investment return of 7.5% should ideally be directed towards rebuilding the investment fluctuation reserve so WorkCover is able to absorb the inevitable, future negative investment returns.

Following the finalisation and reporting of WorkCover's 2007-08 financial results, WorkCover identified a change in claim experience where the volume and cost of common law claims were

¹ 2008-09 Australia and New Zealand Return to Work Monitor, (2009), Campbell Research and Consulting

² WorkCover Annual Report, 2008-09

³ WorkCover Annual Report, 2008-2009

increasing beyond normal inflation. This growth in common law claims and associated claims payments cannot be covered by increasing premium and relying on increased investment returns.

WorkCover appointed Deloitte to undertake a business review of WorkCover. The aim of this review was to ensure that the whole business would be evaluated, and that any other additional drivers behind the emerging financial situation would be identified. The review analysed WorkCover's financial position and identified possible solutions to ensure it remains solvent. Deloitte identified three factors contributing to WorkCover's deteriorating financial position:

- growth in net claims expenditure, incorporating an increase in common law claim numbers in comparison to the growth of statutory claim payments and number of claims;
- income not keeping pace with net claims growth. Premiums have been kept at an average premium rate of approximately \$1.15 per \$100 of wages paid; and
- two consecutive years of substantial negative investment returns because of the global financial crisis.

WorkCover's actuary advises that, if no action is taken to address all the factors, the fund will fall below its target funding ratio of 120% by 30 June 2010. This will occur even if the current investment returns are maintained. A financially sound WorkCover Queensland is vital for workers, employers and the Queensland economy. Only a sound fund will ensure that WorkCover can continue to fund workers' claims, while ensuring that employers continue to be adequately insured for work-related injuries for an affordable premium.

Deloitte identified that the most significant increase in common law claims frequency over recent years has involved claims with lower levels of whole person impairment (WPI). Common law claims in the injury bands of 0–10% WPI accounted for 66% of common law claims and \$233 million in common law claims payments in 2008-09.

The growth in the number of common law claims has been accompanied by a continuous growth in net common law claim payments following resolution. These have grown from \$274 million in 2004-05 to \$395 million in 2008-09. This equates to a 44.2% increase over the four year period or an average compounded annual growth rate of 9.6%. Based on WorkCover's experience to 31 December 2009, the projected common law claim payments for 2009-10 is now \$558 million, which is a 41 percent increase on 2008-09. This increase has been driven by an increase in the numbers of common law claims, as well as an increase in the average cost of common law claims, particularly those with low impairment levels.

Deloitte further identified that the growth in common law claim numbers and payments, when compared to statutory claim numbers and payments, is a systemic issue that is undermining the sustainability of the fund. The average cost of a common law damages claim settled (\$146,811 in 2008-09) is around 30 times higher than the average cost of a statutory claim (\$5,181 in 2008-09). The impact of increasing common law claim numbers and payments means that not only do the direct claim payments increase for WorkCover; but that the outstanding claims liability provision must also increase.

From 2009-10 to 2017-18, the common law claims paid have been projected by WorkCover's actuary to grow at an average compounded annual growth rate of 14.5%, based on 30 June 2009 experience. As a result of this projection, common law claims payments are estimated to account for 64% of all claims costs by 2017-18, from 41% in 2008-09. Based on the projected growth rate, total provisioning for outstanding claims liability will need to grow to \$6 billion by 2017-18 from the current \$2.3 billion in 2008-09. WorkCover's actuary has now conducted a mid-year valuation at 31 December 2009. This valuation indicates that the 2009-10 movement in outstanding claims liability provision will increase to \$395 million, which is \$265 million more than the amount estimated at the 30 June 2009 valuation. WorkCover's actuary estimated if all factors held constant, the recurrent funding gap as being in the order of \$400 million for 2009-10 increasing to

2.050 billion in 2017-18. Time has precluded WorkCover from updating all the analysis conducted by Deloitte using this new valuation, therefore the figures presented in this report are still essentially based on 30 June 2009 results and the Deloitte report.

WorkCover has identified the following factors contributing to the growth in common law claims numbers and costs:

- damages paid in common law have increased and are on average higher than statutory compensation, making common law more attractive than statutory lump sums, which has resulted in increased activity in common law along with increased costs, possibly leading to more opportunistic claims being brought, specifically for minor injuries; and
- more claims are now able to meet the test of proving employer negligence. Recent court rulings have made it more difficult for employers to defend a claim alleging a breach of statutory duty under the *Workplace Health and Safety Act 1995*, i.e. *Bourk v Powerserve* and *Parry v Woolworths*.

WorkCover Board's Recommended Package

The WorkCover Queensland Board considered Deloitte's recommendations, and has proposed the following package of statutory and common law reforms to address the problem with scheme viability:

- increasing statutory lump sums and improving rehabilitation and return to work processes;
- reducing the step down in weekly benefits between weeks 14 to 26 from 85% of normal weekly earnings to 80% and increasing the step down benefits from 75% to 80% of normal weekly earning from 14 weeks to 5 years;
- introducing a common law threshold of 10% whole person impairment (WPI);
- extending common law coverage to host employers and principal contractors who have a WorkCover policy; and
- progressive increases over time in the average premium rate.

The projected costs and savings of WorkCover's package of options are set out below.

Projected costs and benefits of WorkCover package of recommendations per \$m

Item	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18
Common law 10% WPI threshold (cost year 1 then benefit)	(34)**	50	237	377	517	622	741	878
Extend coverage to PC (cost)	(20)	(21)	(23)	(24)	(25)	(27)	(29)	(32)
Changes to statutory benefits, including increase lump sum (cost)	(1)	(50)	(75)	(90)	(101)	(111)	(121)	(133)
Additional return to work initiatives	(20)	(21)	(23)	(24)	(25)	(27)	(29)	(32)
Increase average premium rate (benefit)	59	67	123	137	210	233	326	360

This projection is based on 30 June 2009 experience. Source: WorkCover Queensland, Deloitte

** The benefits from a threshold will take approximately three financial years to be realised, as a threshold would be introduced based on date of injury and workers have up to three years from the date of injury to lodge a common law claims (i.e. statute of limitations).

Statutory Scheme Recommendations

As previously stated, the statutory scheme covers around 96% of all claims (common law accounts for the other 4%). The Queensland scheme performs well when compared with other jurisdictions, particularly in relation to return to work outcomes (75% durable return to work rate compared with 76% national average⁴). However, this performance leaves room for improvement.

⁴ 2008/09 Australia & New Zealand Return to Work Monitor

The WorkCover Board has proposed the following changes to the statutory scheme as part of its package of recommendations, which includes a 10% threshold to access common law:

- increase the permanent impairment lump sum maximum to \$300,000 from \$244,710 at an estimated cost of \$21.9 million per annum per injury year;
- reduce the step down in weekly benefits between weeks 14 to 26 from 85% of normal weekly earnings to 80% at an estimated saving of \$2.6 million per annum;
- increase the step down in weekly benefits between weeks 27 to 5 years from 75% of normal weekly earnings to 80% at an estimated cost of \$2.0 million per annum; and
- additional return to work measures to promote faster recovery.

Increase maximum statutory lump sum to \$300,000 from \$244,710

The maximum statutory lump sum compensation is currently \$244,710 and is indexed each year according to changes in Queensland Ordinary Time Earnings (QOTE)⁵ Any restrictions to common law benefits by way of a threshold would be offset by increasing the amounts available under the statutory scheme. WorkCover has costed an increase in the maximum statutory lump sum to \$300,000. This increase, along with proposed changes to the step down provisions discussed in the next option, would impose an additional \$50 million in costs in the first year, increasing steadily each year to \$133 million by 2018.

Bring forward step down in benefits from 26 to 13 weeks with corresponding increase in rate

Weekly compensation is paid, for workers employed under an industrial instrument (e.g. an award or enterprise agreement), at the rate of 100% of the amount under the industrial instrument, or 85% of the worker’s normal weekly earnings, whichever is greater. After 26 weeks, this rate steps down to 75% of normal weekly earnings or 70% of Queensland Ordinary Times Earnings (QOTE), whichever is greater, for up to 2 years. After 2 years, the rate continues if a work related impairment of 15% or more can be demonstrated. Otherwise, the single pension rate applies (\$335.95 per week) unless the injury is stable and stationary.

WorkCover Board recommends maintaining weekly compensation at 100% of the award or agreement rate, or 85% of normal weekly earnings, for the first 13 weeks of a claim. After 13 weeks it is proposed to reduce entitlements to the greater of 80% NWE or the federal minimum wage (currently \$543.78 per week). This rate would apply from week 14 to 5 years, as shown below.

Current and proposed step down in weekly benefits

Duration		Current (greater of)		Proposed (greater of)	
0-13 weeks		100% award or agreement	85% NWE	100% award or agreement	85% NWE
14-26 weeks				Federal minimum wage	80% NWE
26 weeks-2 years		70% QOTE	75% NWE		
2-5 years	WRI >15%	Single Disability Support Pension rate			
	WRI <15%				

⁵ QOTE, for a financial year, is the seasonally adjusted amount of Queensland full time adult persons ordinary time earnings as declared by the Australian Statistician in the statistician’s report about average weekly earnings published immediately before the start of the financial year. The publication is currently entitled ‘Average Weekly Earnings, Australia’.

The rationale behind the proposed step down is that the majority of compensable injuries are resolved within three months (based on medical evidence⁶). An earlier step down also encourages earlier return to work. Injuries that are more serious can take up to two years or longer to resolve.

Over the long term, more seriously injured workers would receive more weekly compensation (80% NWE instead of 75% NWE). The reduction in time from the first step down (13 instead of 26 weeks) is partially offset by the increase in compensation (75% to 80% NWE). In addition, the proposal to make the 'floor' rate equal to the federal minimum wage (\$543.78 per week) is also more beneficial than the current single pension rate (\$335.95 per week) and provides consistency in payments from 14 weeks to the five year cut-off.

It is argued that these changes can support earlier return to work and more weekly compensation benefits to injured workers. The changes have been actuarially assessed as being cost-neutral.

Additional return to work initiatives

At present, 5% of injured workers are not fit for work at the end of their claim. An additional 12% are fit for work, but do not have a job to which to return. It is proposed that a range of additional return to work initiatives be implemented, including: vocational assessments; re-skilling/retraining; job placement services; host employment; and incentives for workers/employers to pursue work where the worker is unable to return to the previous job or employer.

The objective of these initiatives is to identify, at an early stage in the claims process, workers who are at risk of not being able to return to their previous employment or occupation due to the injury resulting in an ongoing disability. If, during the rehabilitation process, it becomes apparent that a worker is at risk of not being able to undertake their prior occupation, a vocational assessment will be undertaken to identify the type of work the worker will be able to undertake in the future. The worker will then be re-skilled and re-trained for that new work. Finally, the worker will be provided with services to assist to the worker secure ongoing employment in that field. WorkCover intends to further enhance its host employment arrangements to provide sustained and ongoing employment.

WorkCover will identify appropriate service providers to assist with the provision of services to support these initiatives. Internally, case management processes will be enhanced to facilitate the early identification of workers who may be at risk and ensure appropriate referrals are made. If a worker has still not returned to work by the end of the claim process, the Return to Work Assist Program offered by QCOMP is available to support the worker beyond the claim process.

Question

Will the changes to statutory benefits and the rehabilitation and return to work initiatives reduce claim duration and foster return to work?

Common law recommendations

Currently, all injured workers can access common law under the Act. However, in order to receive common law damages, they must establish that their employer was negligent. All other states have restrictions on common law, as can be seen in the Attachment 2: "Nation on a Page". However, comparisons with other jurisdictions are difficult because Queensland has a "short tail" scheme compared to the "long tail" schemes in other jurisdictions. Tasmania is the exception and limits statutory benefits to nine years.

⁶ WorkCover SA Annual Report 2007-08

Solomon L, Warwick DJ, Nayagam S, Apley's System of Orthopaedics and Fractures, 8th Ed (2001)

Russell RCG, Williams NS, Bulstrode CJK, Bailey and Love's Short Practice of Surgery, 23rd Ed (2000)

Presley Reed, The Medical Disability Advisor. 2nd Ed (1994)

The WorkCover Board recommends the introduction of a 10% or 15% Whole Person Impairment (WPI) threshold to access common law. WorkCover estimates that based on claims registered in 2008-09 a 10% threshold would reduce common law claims by 66%. Impairment thresholds remove less serious injuries from the common law system, enabling the statutory claims process to deal with these claims more efficiently and for less cost.

While the Act requires permanent incapacity to be assessed using a Work Related Impairment methodology (WRI), WorkCover proposes moving to a WPI methodology of calculating impairment for both common law and statutory claims. The WPI method is informed by the American Medical Association guides for permanent impairment, while the WRI method exists solely for the Queensland workers' compensation scheme. Q-COMP has undertaken a comparison of the WRI and WPI methodologies and advises that, for upper and lower limb injuries, the current system of establishing the WRI will result in a higher percentage than if the WPI were used. For all other injuries, the WRI would generally be the same as the WPI, other than for some 'deemed' injuries. Generally, if a threshold were introduced based on a 10% WPI, fewer injuries would meet the threshold than if the threshold were based on WRI.

All other jurisdictions use WPI. As Queensland is the only jurisdiction that measures impairment using WRI, the adoption of WPI by Queensland would create greater national consistency. By converting existing WRI assessments, Deloitte was able to analyse the common law lodgements based on WPI equivalents. Between the 2004-05 and 2008-09 financial years, claims involving a WPI of less than 5% accounted for 42% of total common law claims lodged, while claims with a WPI between 5 and 10% accounted for 24% of total common law claims lodged.

Examples of injury types by WPI band are set out below:

- 0-2% - carpal tunnel or tennis elbow;
- 0-5% - aggravation of degeneration or minor impairment of back/neck;
- 5-8% - operated disc prolapse with no residual problems;
- 10-15% extensive knee ligament injury with instability/laxity;
- 54% - loss of hand, more if dominant hand; and
- 95% - quadriplegia.

Questions

In your view, how can the issues driving the increase in common law claim numbers and claim costs be addressed for the long term?

Is the proposal to move to national consistency in the assessment of permanent impairment i.e. from WRI to a WPI measure, a desirable outcome?

Regarding host employers/principal contractors as the 'employer' for common law purposes

The WorkCover Board has also recommended extending common law coverage to host employers/principal contractors in cases of injuries to workers employed by labour hire firms and contractors, if the host employer/contractor has a policy with WorkCover. In situations where a person has some control over a worker's work or workplace without being the direct employer (e.g. a construction workplace where a principal contractor directs workers on site or a 'host employer' in a labour hire arrangement), the Act only indemnifies the actual employer of the worker for any common law damages for personal injury. Host employers/principal contractors are not indemnified by WorkCover and must seek private insurance for any liability for damages to an injured person.

Public liability insurers are increasingly reluctant to provide this type of indemnity, meaning host employers/principal contractors may potentially be uninsured for these types of claims. Under this proposal, WorkCover would apportion liability against the two WorkCover policies rather than one

WorkCover policy and the host employer/contractor through their public liability policy. Deloitte estimates that this would cost \$20 million in the first year of operation, increasing to \$32 per annum by 2017-18.

Alternative Options

Queensland stakeholders have identified a number of alternative measures that may contribute to a reduction in the volume of common law claims and claims costs. Three packages are proposed as alternatives to the WorkCover Board's recommendations. However, it should be noted that the WorkCover Board has responsibility for setting premiums and the amount of premium increase would depend on the Board's evaluation of the effectiveness of the other measures in achieving WorkCover's targeted funding ratio. Premium rates based on these packages have not been costed, however given the size of the funding gap, based on the indicative savings identified by WorkCover's actuary (below), it is likely that premium would need to increase more than the average premium rate of \$1.25 per \$100 identified as part of WorkCover's proposed package.

The three options can be broadly grouped as those that impose thresholds on common law access (options A and B) and those that cap damages (option C).

Option A – Allow common law claims only where employment was the major significant contributing factor to the injury as well as:

- address the increased difficulty faced by employers in defending claims, as a result of *Bourk v Power Serve P/L & Anor* [2008] QCA 225;
- options to increase obligations on third parties to fully participate in the resolution processes in the pre-proceedings process;
- allow courts to award costs against plaintiffs whose claims are dismissed;
- increase employer excess; and
- increase premiums beyond those proposed by the WorkCover package..

Option B – Exclude workers who are assessed as having 0% impairment from accessing common law as well as:

- address the increased difficulty faced by employers in defending claims, as a result of *Bourk v Power Serve P/L & Anor* [2008] QCA 225
- options to increase obligations on third parties to fully participate in the resolution processes in the pre-proceedings process;
- allow courts to award costs against plaintiffs whose claims are dismissed;
- increase employer excess; and
- increase premiums beyond those proposed by the WorkCover package..

Option C – Align the Workers' Compensation and Rehabilitation Act 2003 with the Civil Liability Act 2003 by imposing caps on common law damages by

- Capping common law damages in the same way as under the *Civil Liability Act 2003*; as well as
- address the increased difficulty faced by employers in defending claims, as a result of *Bourk v Power Serve P/L & Anor* [2008] QCA 225
- options to increase obligations on third parties to fully participate in the resolution processes in the pre-proceedings process;
- allow courts to award costs against plaintiffs whose claims are dismissed;
- increase employer excess; and
- increase premiums beyond those proposed by the WorkCover package.

Questions

Are there any other options that you can suggest?

Analysis of Alternative Options

(1) Allow common law claims only where employment was the major significant contributing factor to the injury

Under section 32 of the Act, an injury is compensable only if it arose out of, or in the course of, employment and the employment was ‘a significant contributing factor’ to the injury. It has been suggested that the number of common law claims could be substantially reduced by requiring employment to be “the major significant contributing factor to the injury” in order to gain access to common law. The introduction of a stricter requirement to access common law would ensure:

- the short tail nature of the scheme is retained with the “irrevocable election”;
- consistency with existing policy that the scheme has a “no-fault” statutory claim and a “fault” based common law claim;
- immediate impact – this amendment could be put in place immediately, where a threshold would apply to new claims; and
- maintenance of existing infrastructure without change i.e. Medical Assessment Tribunals.

The modelling by WorkCover’s actuary is based on changes in frequency rates for common law and statutory claims after previous amendments to the Act. The injury definition was changed in February 1997 to require work to be “the major significant contributing factor” and then again in July 1999 to “a significant contributing factor”. The actuary advises that it is difficult to separate the impact of the change in definition of injury from other changes at the time. There was a 3.7% increase in statutory claims in the injury year 2000, which was the first year impacted by the lesser test for injury. There was a larger increase in common law frequency, but it is the view of the actuary that this appears to have been a continuation of a trend. However, if it assumed that the change in statutory claim frequency was due mostly to the change in definition of injury, then it is possible to use the 3.7% as a basis for estimating the proposed change on claims. As a result, WorkCover’s actuary estimates that changing the definition to ‘the major significant contributing factor’ for common law claims could result in a reduction of claim numbers by 3.7%.

WorkCover considers that the cost saving associated with this would be partially offset by an increase in legal costs, as there would be additional time spent deciding the level of work-relatedness of any injury for the purpose of establishing entitlement to common law. It is also assumed that the reduction in frequency would occur evenly across all sizes and severity of claims. The actuary’s advice is that, in aggregate, the impact of this change would not be very large.

Question

In your view, is it appropriate to have a different definition of injury for common law?

(2) Strengthen the ability of the insurer to defend a common law claim which relies on the establishment of fault by the employer in not providing a safe workplace

In *Bourk v Power Serve Pty Ltd & Anor* [2008] QCA 225 and *Parry v Woolworths Limited* [2009] QCA 26, the Queensland Court of Appeal affirmed that if a worker is injured at work and there is a causal connection between the injury and the work, the employer has breached its duty under the *Workplace Health and Safety Act 1995* (WHS Act). The employer then bears the onus of establishing a defence pursuant to the WHS Act.

Stakeholders generally agree that these decisions have made it more difficult for employers to defend claims for damages for statutory breach of the WHS Act. They consider that these decisions significantly affect employer exposure to common law claims and are a factor in the increasing common law claims rate. For example, one Queensland self-insurer has advised that, during the period 1 October 2008 to 30 September 2009, common law claims lodgements have increased by an estimated 27% per quarter because of the Bourk decision.

The Bourk decision was handed down in August 2008. Since that time, WorkCover and self-insurers have identified a notable increase in the numbers of common law claims lodged by workers. WorkCover's actuary has advised that it is not possible to be definitive on the cause of the increase, but it is likely that at least a component of the trend is due to Bourk. The increase in numbers lodged from September 2008 to December 2008 was 6.35%. The actuary further advises that if most of this increase was due to Bourk, then a potential reduction in claim frequency at common law would be in the order of 6.4%. For example, removing 6.35% per annum from the growth rate of common law frequency for the 2008 and 2009 injury years, results in an estimated long term rate of increase of 5.8% per annum in common law frequency, rather than 6.6% per annum estimated, based on the December 2009 experience.

Possible approaches to address the *Bourk* decision include:

- (i) modify the employer's absolute duty under the WHS Act;
- (ii) provide that breach of the WHS Act does not provide a basis for civil action for damages; or
- (iii) provide that causation needs to be proved to succeed in a damages claim for breach of the WHS Act.

The advice from the actuary, is that, while amending the legislation in response to the Bourk decision will slow down the growth in common law frequency, it is not likely to arrest the growth in common law as a single measure. Consequently, the pressure on the solvency of the fund will remain.

Question

Is it appropriate for the effect of the Bourk decision to be addressed? What measures could be taken to achieve this?

(3) Increase obligations on third parties to contribute to fully participate in the resolution mechanisms in the pre-proceedings process

The current pre-proceedings process requires claimants and respondents to actively participate in a compulsory settlement conference by exchanging material relevant to the claim and estimates of their legal costs before the conference, certifying readiness for conference and exchanging mandatory final offers at the conference. However, while third party tortfeasors such as motor accident insurers, suppliers of defective products, occupiers of property etc. are required to attend and actively participate in the compulsory settlement conference, they are not under the same obligations as other parties to exchange relevant documents, estimates of legal costs and submit a mandatory final offer.

It has been suggested that the legislation be amended to require third-party tortfeasors to exchange relevant documents, provide estimates of legal costs and submit mandatory final offers. This option would reduce the duration of claims and ensure that benefits are delivered to injured workers as soon as possible. In addition, further legal fees are incurred due to third parties not appropriately participating in the pre-proceedings process. In 2009, WorkCover spent \$7.63 million in legal fees and outlays in relation to claims where third parties were involved. On the assumption that there would be a 20% reduction in legal fees due to this change, WorkCover estimates the saving for that year would have been \$1.52 million.

Questions

How effective do you think this proposal will be in resolving claims earlier and reducing legal costs? In what other ways can legal costs be reduced?

What other measures could be taken to achieve these goals?

(4) Allow costs to be awarded against plaintiffs whose cases are dismissed

The current wording of section 316 of the Act means that a plaintiff who loses a case outright cannot be ordered to pay WorkCover's costs (see *Sheridan v Warrina Community Co-operative Ltd & Anor* [2004] QCA 308). Currently, the Act only allows costs orders in particular circumstances, mainly relating to whether the court awards more or less than a party's final written offer of damages. No provision is made in the Act for claims that are dismissed.

The Court of Appeal has held that this means no costs can be awarded against a plaintiff whose claim is dismissed. It has been suggested that it is anomalous and inconsistent that a plaintiff who falls below WorkCover's mandatory final offer suffers costs consequences for taking the matter to trial, yet a plaintiff who receives no damages because of a finding of no liability is not required to pay WorkCover's costs. In Victoria, if an award of damages is equal to or less than the statutory offer made by the defendant, the plaintiff must pay the party and party costs of the defendant. In New South Wales, this is left to the courts' discretion. It is considered that this proposal will act as a deterrent to plaintiffs continuing some claims.

WorkCover advises that claims where the Sheridan decision has an impact are low in frequency. The impact on claim costs is limited to reducing the legal fees incurred by WorkCover when this type of claim is brought. In 2009, WorkCover finalised 249 claims with no damages payment. The reasons vary from third party contributions exceeding the level of damages and compensation paid or required to be paid by WorkCover for these types of claims. The total amount paid by WorkCover in legal fees and outlays to defend these claims was \$2.97 million in 2008-09. On an assumption that 50% of these costs were related to this type of claim, WorkCover estimates that the saving would have been \$1.49 million in 2008-09. However, the deterrent effect of this legislation in bringing unmeritorious claims must also be taken into account.

Questions

How effective do you think this proposal will be in limiting speculative claims?

What other implications does this proposal have for injured workers?

(5) Increase Employer Excess

The employer excess acts as an incentive for injury prevention by placing an upfront cost on employers for any compensable injuries sustained by workers, rather than responding to premium increases due to experience in the following premium year. The employer excess amount is currently 65% of Queensland Ordinary Times Earnings (QOTE) or \$740 for most employers. As part of measures to increase employer contributions to the scheme, Deloitte recommended that the excess be increased to 100% of QOTE (\$1,132), or one week of compensation, whichever is the lesser amount.

For employers of workers earning more than \$740 per week, an increase in excess would provide a greater incentive for them to prevent work related injury and illness, while at the same time reducing WorkCover's statutory claims costs. WorkCover's actuary has estimated this proposal to save \$7.38 million per annum. This proposal would also bring Queensland into line with the majority of jurisdictions that require the employer to pay the first week or more (see below).

Comparison of Employer Excess by Jurisdiction

Jurisdiction	Payment for incapacity	Cost of benefits
NSW	First week's weekly compensation	-
VIC	First 10 days of compensation	First \$546 of medical and related costs
QLD	65% of QOTE (currently \$740)	-
WA	No excess	-
SA	First 14 days per worker per calendar year	first \$150 of transportation for initial treatment
TAS	First weeks payment	First \$200 of other benefits
NT	Employer has to pay first day	-
ACT	Negotiated between insurer and employer (privately underwritten)	-
CWLTH	No excess	-
NZ	Employer has to pay for the first week	-

Questions

Should Queensland seek to harmonise the employer excess in line with other jurisdictions?

Will increasing the employer excess place greater emphasis on the prevention of injuries in the workplace?

(6) *Exclude workers with 0% Whole Person Impairment from accessing common law*

Under this option, workers whose injuries are assessed as causing no whole person impairment (0% WPI) would not be able to access common law. This would ensure that only workers with a measured ongoing impairment can access common law. In the 2008 injury year, 25.5% of claims for common law were assessed at 0% WPI.

WorkCover's actuary has modelled this option on the basis that a 0% threshold would be introduced, but the irrevocable election at 20% would be retained, and there would be some increase in statutory claims due to behavioural changes. A financial year model has not been developed for the 0% WPI as it would require a complete package to be decided and costed.

Using the 2008 injury year, WorkCover's actuary estimates the savings of a 0% threshold for that injury year would be approximately \$74 million. A key assumption made by the actuary is the erosion of a 0% threshold over time. This assumes that over time, there is likely to be an increase in smaller impairment ratings (e.g. one to two percent), inflated in order to pass the common law threshold test. The actuary's advice is that a threshold at this level will result in the continued reduction of fund solvency, albeit at a slower rate than the 'as is' projection.

Question

What is your view of a 0% common law claims threshold – is it fair and equitable?

(7) *Greater harmonisation with the Civil Liability Act 2003*

The *Civil Liability Act 2003* (CL Act) places caps on the level of general damages and past and future economic loss. General damages are capped at \$250,000, with awards determined by reference to an injury scale that places a 'value' on the particular injury. The scale is geared to award relatively low amounts of general damages for minor injuries and relatively high amounts of general damages for serious injuries. Damages for economic loss are capped at a level of three times the average Queensland full-time weekly wage for the period of incapacitation. There are no caps on awards for all other heads of damage (e.g. medical expenses). However, there are controls on access to some heads of damages such as gratuitous care for ongoing assistance with daily living activities and legal costs.

Capping damages in line with the CL Act would create greater uniformity across the three personal injuries schemes in Queensland (workers' compensation, motor vehicle accident and public liability). The department is also examining greater consistency in pre-court procedures between the *Workers' Compensation and Rehabilitation Act 2003*, the *Personal Injuries Proceedings Act 2002* and *Motor Accident Insurance Act 1994*. This should help to reduce duration and costs of common law claims involving both work and non-work related elements.

The compulsory third party (CTP) scheme has a different injury profile to workers' compensation. In CTP, the lower severity injuries are mostly whiplash in nature. Further, there are greater numbers of catastrophic injuries in the CTP scheme. It is only possible to undertake a high level analysis of the impact of introducing CL Act caps for the workers' compensation scheme and some assumptions are required.

Based on a high level analysis by WorkCover's actuary (PWC have undertaken actuarial work with CTP schemes), overlaying the ISV (scale used under the CL Act) on WorkCover's experience, reducing general damages, along with reduced frequency and increased future economic loss, results in an estimated reduction in common law costs of 12.5% per injury year. This would be influenced by frequency reduction in minor injury claims, an increase in average claim size due to smaller claims leaving the scheme and increased costs borne by the statutory scheme. However, this estimate does not include the consequential impact on benefits changes such as greater access to gratuitous care and increases in legal fees paid by insurers. These factors are likely to partially offset any savings, particularly the alignment of gratuitous care, as the current legislation for workers' compensation contains very strong restrictions and consequently it is rarely paid.

Question

What aspects of the *Civil Liability Act 2003*, if any, should be reflected in the *Workers' Compensation and Rehabilitation Act 2003*?

Premium

WorkCover Queensland has had the lowest average premium rate of any state or territory for approximately 10 years and it remains significantly below the nearest State, Victoria, which has an average premium rate of \$1.39 per \$100 of wages paid. The Victorian rate is 21% higher than Queensland's average premium rate of \$1.15 (see below).

Jurisdictional comparison of average premium rates per \$100 of wages						
	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Queensland	1.55	1.43	1.20	1.15	1.15	1.15
NSW	2.57	2.17	1.86	1.72	1.77	1.69
Victoria	1.99	1.80	1.62	1.46	1.39	1.39
SA	3.00	3.00	3.00	3.00	3.00	3.00
WA	2.25	2.32	2.13	1.85	1.58	1.74
NT	2.95	2.70	2.40	2.31	N/A	N/A
Tasmania	2.46	2.19	1.95	1.94	1.83	1.97
ACT	3.07	3.32	3.15	N/A	N/A	N/A
Comcare	1.67	1.77	1.77	1.55	1.36	1.25

Source: Various

A phased increase in the average premium rate is proposed by the WorkCover Board to ensure income keeps pace with claims growth while minimising the impost on business, so that economic growth is not dampened.

Under the Act, all premium matters are decided by the WorkCover Queensland Board. The Board proposes increasing the average premium rate progressively, with an increase from \$1.15 to \$1.25 per \$100 wages from 2010-11, which is an 8% increase from the current rate of \$1.15. Based on 30 June 2009 experience, it is estimated that premium would increase to an average of \$1.40 per \$100 wages by 2017-18. These estimates are contingent on the introduction of a 10% threshold for

accessing common law. Depending on the suite of options agreed to address costs and the growth in common law claims, the average premium rate may need to be increased beyond an average of \$1.25 in the first year. At \$1.25, Queensland's average premium rate will remain the lowest of the states and territories and the Victorian rate will be 11% higher than the Queensland rate.

WorkCover currently offers a 3% premium discount for employers who pay their premium two weeks before the due date of 30 September each year. Deloitte recommends that in 2010-11, a further 2% premium discount may be offered as an incentive to employers as they emerge from the global financial crisis and to partially offset the increase in the average premium rate. However, WorkCover advises that this proposal, which is estimated to cost \$22 million in 2010-11, can only be further considered in conjunction with the final package of proposed changes to ascertain the viability of this recommendation.

Other proposed changes to premium calculation will result in a closer alignment between premium and an employer's claims experience. It is proposed to remove the current cap on premium rates, which limits the premium rate charged for a policy to twice the industry rate.

In 2009-10, 1,177 policies of insurance (less than 1% of all policies) were impacted by the 'twice the industry rate' cap. These policies are spread across all premium bands relatively evenly. The main industries represented in this group are construction and manufacturing. For larger employers, in addition to construction and manufacturing, the other industry affected is health and community services, whereas for smaller employers the other main industry affected is retail trade. WorkCover advises that the premium calculation method has other levelling factors to reduce volatility, particularly for small employers.

Concluding question:

Which of the options – among WorkCover's recommendations, the three alternatives or any that you have suggested – do you consider as striking the best balance between providing benefits to all workers, affordable costs for employers and the ongoing viability of the WorkCover fund?

History of Key changes to Queensland's Workers' Compensation Scheme 1990-2010

1990

Queensland Parliament passed the *Workers' Compensation Act 1990*. This Act repealed the *Workers' Compensation Act 1916*. The structure and main features of the scheme were retained (e.g. journey claims), although significant changes in coverage, benefits and services to injured workers were introduced, including:

- expanding the definition of 'worker' to include casual workers;
- amending the definition of injury to employment being 'a significant contributing factor' causing injury;
- extending the duration of benefits on full award rates from 26 to 39 weeks;
- increasing maximum benefits payable by 20 percent, bringing the total to \$67,000;
- maximum death benefits increased to \$89,000;
- reducing the eligibility period for de facto partners from three years to one year's cohabitation;
- increasing allowances to dependants; and
- amending the criteria for industrial deafness to include seasonal workers.

1995

In 1995 the workers' compensation fund recorded unfunded liabilities of \$320 million. This was mainly due to increases in the numbers of common law claims, and premium merit bonuses awarded to employers. In addition, the wider economic recession of the early 1990s had an impact through increased numbers of business closures and employers defaulting on premium obligations.

The deregulation of the legal industry (allowing lawyers to advertise) and the low standard of proof required for psychological injury were also identified as factors in the rise in common law claims. The Goss Government introduced amendments to address the proliferation of common law actions including:

- an irrevocable election for common law for impairments under 20 percent;
- a comprehensive table of injuries including whole person impairment scales to regulate lump sums;
- an employer excess; and
- abolishing the cost indemnity rule (ie. loser pays costs of other side) as part of common law proceedings for less serious injuries.

1996

The *WorkCover Queensland Act 1996* repealed the *Workers' Compensation Act 1990*. The new Act was introduced by the Borbidge Government in response to the *Kennedy Inquiry into Workers' Compensation and Related Matters in Queensland*. The main features of the new Act were:

- restricting the definition of 'worker' to PAYE taxpayers on a contract of service;
- restricting the definition of 'injury' to claims where employment is 'the major significant factor';
- reducing full income replacement from 39 to 26 weeks;
- introducing self-insurance for employers of 500 or more workers;
- increasing the level of industrial deafness not compensable from first 1% to first 5%;
- restricting journey claims to and from work to 'the shortest convenient route';
- introducing compulsory pre-court procedures for common law claims to minimise legal costs;
- introducing mandatory consideration of, and reductions in damages for, contributory negligence; and

- restricting access for workers more susceptible to psychiatric and psychological injuries by introducing ‘reasonable person’ and ‘ordinary susceptibility’ tests for these claims.

1999

The Beattie Government introduced amendments to the *WorkCover Queensland Act 1996* in 1999 as part of the ‘Restoring the Balance’ White Paper. At that time many injured workers were missing out on compensation to which they would have been entitled to under the pre-1996 Act. These amendments included:

- restoring the definitions of ‘worker’ and ‘injury’ to their pre-1996 meanings;
- removing the shortest convenient route requirement for journey claims;
- removing the ‘reasonable person’ and ‘ordinary susceptibility’ tests for psychiatric claims;
- overhauling the review and appeal/medical assessment tribunal processes to improve fairness; and
- strengthened the criteria for self insurance, including a requirement for a OHS management system.

2001

The Beattie Government passed further amendments to the Act to implement the ‘WorkCover Queensland – Leading Australia’ election commitment, including:

- increasing the lump sum benefit on the death of a worker to \$250,000;
- increasing the maximum statutory benefit to \$150,000;
- increasing the amount available for dependants;
- improving the criteria to access statutory gratuitous care;
- improving common law pre-proceedings processes and administrative arrangements to ensure claims are resolved earlier;
- repealing provisions contributory negligence to be considered; and
- allowing the courts to have discretion to award costs, interest on damages and loss of consortium.

2003

Following a National Competition Policy review recommendation to separate WorkCover Queensland’s commercial and regulatory functions, the *WorkCover Queensland Act 1996* was repealed and replaced by the *Workers’ Compensation and Rehabilitation Act 2003*. The new Act established Q-COMP as regulator of the scheme. Subsequent amendments to the Act provided:

- protection from dismissal for more seriously injured workers for 12 months (up from six months);
- a ‘results test’ for the definition of ‘worker’, based on a test used by the Australian Taxation Office for personal service income, which ensured workers’ in non-standard employment arrangements had workers’ compensation coverage.

2004

Parliament passed various amendments including:

- improving worker benefits by providing an additional step down in benefits for injured workers between 26 and 39 weeks;
- removing the link between weekly and lump sum compensation. The maximum amount of compensation available to a worker was previously calculated on both weekly and lump sum compensation paid. Removing the link meant that the maximum amount of compensation was now available for each category of compensation rather than both, effectively doubling the amount of compensation available to a worker;

- increasing compensation payable to dependants to \$300,000;
- allowing early participation of third party tortfeasors in common law claims, consistent with the *Personal Injuries Proceedings Act 2002*. This accelerates the resolution of claims and reduces legal costs by bringing other parties who are potentially liable into the proceedings at an earlier stage; and
- allowing appeals to be heard before either the Queensland Industrial Relations Commission or an Industrial Magistrate, rather than by an Industrial Magistrate only.

2005

Parliament passed various amendments including:

- improving workers' compensation benefits by extending the step-down in benefits for injured workers from 39 to 52 weeks;
- increasing lump sum compensation payable to dependent members of an injured worker's family to \$374,625 and increasing the lump compensation payable to dependent members of an injured worker's family with a totally dependent spouse to \$20,000, while increasing weekly compensation payable to 10 percent of QOTE. For non-dependents including spouse, children and next of kin, a new benefit was introduced equivalent to 10 percent of the maximum death benefit lump sum compensation – this was paid to a deceased worker's estate;
- aligning the calculation of benefits for latent onset injuries with the method used by the courts. Courts calculate damages under categories including pain and suffering, loss of earnings and gratuitous care. The alignment applied the Courts' method while obviating the need for litigation; and
- introducing obligations on employers to not dismiss a worker solely or mainly because they are not fit for employment in their pre-injury role due to their injury.

2007

During a period of extended economic growth and financial stability, a limited review of the scheme was conducted to examine the sustainability of low premium rates and possible increases in worker benefits. Following this review:

- the one and two year step-down of benefit entitlements were removed, with benefits increasing to 75% of normal weekly earnings or 70% of Queensland Ordinary Time Earnings (being \$792.50 as at 1 July 2009) for the period from 26 weeks to five years (conditional on impairment level >2 years);
- maximum additional lump sum compensation payable was increased to \$218,400;
- access to additional lump sum compensation was increased by reducing the threshold level of work-related impairment from 50% to 30%, meaning that more workers were able to access additional lump sum compensation; and
- statutory reduction of dependants' death benefits by the amount of compensation already paid to workers was abolished.

2008

- Limited death benefits were introduced for dependants of a worker with latent onset injury (e.g. asbestos related diseases) – 15% of the maximum death benefit and 2% of the maximum death benefit for reasonable funeral expenses.

THE NATION ON A PAGE – Summary of key worker’s compensation scheme indicators, November 2009

ATTACHMENT 2

	South Australia	NSW	Victoria	Queensland	Tasmania	WA	NT	ACT	Comcare
Fund type	Central Fund	Managed Fund	Central Fund	Central Fund	Private insurers	Private insurers	Private insurers	Private insurers	Central Fund
Workers covered	680,900 (2007-08)	3,011,008 (2007-08)	2,350,000 (31 Dec 08)	2,147,100 (2008-09)	193,080 (30 June 2007)	919,507 (30 Jun 2007)	116,857 (30 June 2008) (Includes approved insures, self insures and NT Govt Employees)	95,410 (30 June 2007)	353,500 Sept 2008 Commonwealth, ACT Government & self insurers
Self-insurers	68 +Crown -May 09	68 (August 2009)	37 (1 July 2009)	23 (1 July 2009)	16 (30 Jun 2006)	27 (March 2009)	4 +NT P/ Service Apr 08	9 (Jun 07)	27 (September 08)
Average Levy Rate	3.00% - 2009-10 3.00% - 2008-09 3.00% - 2007-08 3.00% - 2006-07 3.00% - 2005-06	1.69% - 1 Jan 2009 1.72% - 1 Jul 2008 1.77% - 1 Jan 2008 1.86% - 1 Jul 2007 1.99% - 1 Jan 2007 2.17% - 1 Jul 2006	1.39% - 2009-10 1.39% - 2008-09 1.46% - 2007-08 1.62% - 2006-07 1.80% - 2005-06 1.99% - 2004-05	1.15% - 2009-10 1.15% - 2008-09 1.15% - 2007-08 1.20% - 2006-07 1.43% - 2005-06 1.55% - 2004-05	1.83% - 2008-09 1.94% - 2007-08 1.95% - 2006-07 2.19% - 2005-06 2.46% - 2004-05	1.58% - 2008-09 1.85% - 2007-08 2.13% - 2006-07 2.32% - 2005-06 2.25% - 2004-05	n/a - 2008-09 2.31% - 2007-08 2.40% - 2006-07 2.70% - 2005-06 2.95% - 2004-05	n/a - 2008-09 n/a - 2007-08 3.15% - 2006-07 3.32% - 2005-06 3.07% - 2004-05	1.36% - 2008-09 1.55% - 2007-08 1.77% - 2006-07 1.77% - 2005-06 1.67% - 2004-05
Max published rate	7.5% (cap) 2007-08	11.672% (30 Jun 2009)	8.581% no cap (2008-09)	6.502% (2009-10)	8.2% (2007-08)	6.5% (2008-09)	None	Not available	N/A -based on exp.
Funding ratio	51.7% (31 Dec 08)	87% (31 Dec 2008)	97% (30 June 2009)	128% (30 June 2009)	168% (2005-06)	129% (2006-07)	110% (June 2007)	Not available	113% (30 June 2008)
Excess/unfunded*	\$1.3b unfunded (30 Dec 2008)	\$1.77b liability (31 Dec 2008)	Assets: \$7,881m Liabilities: \$8,154m (30 June 2009)	\$648 million excess (30 June 2009)	Nil	Not available	Nil	Not available	\$157 million excess
Prudential margin*	5.2%	13% risk margin	8.5%	12.7 % (30 June 2009)	Nil (insurer has own)	Nil (insurer has own)	Nil (insurer has own)	Not available	9.6%
Prudential margin* confidence interval	65%	75% (APRA)	75%	80%	Insurers apply own margins	Insurers apply 75% (APRA)	APRA	75% (APRA)	75%
Journey claims	No	Yes	No	Yes	No	No	No	Yes	No
Common law	No	Yes	Yes – limited	Yes	Yes	Yes	No	Yes	Yes - limited
Income 0-13 wks (total incapacity)	100% AWE	Award CWWR 100% (excl OT) else 80% AWE	95% (AWE to 75%) Stat max \$1300	1-26wks: amt payable under Award; or (not under award) 85%/NWE or 80% of QOTE **	100%	100% (incl allowances max 2 x AWE)	100%	100% AWE	100%
Income 13-52 wks (total incapacity)	13-26 wks 90% AWE 26-52 wks 80% AWE	13-26 wks - Award CWWR – 100% (excl O/T) else 80% AWE. 27-52 wks - < stat rate (+ pay for dep' d spouse /child) or 90% AWE	75% Stat max \$1300	27-52wks – 75% NWE or 70% QOTE	85%	14-26 wks -100% Award wksr, 85% for non-Award wksr. 27-52 weeks – 85% (Max 2 x AWE)	14-26 weeks - 100% 27-52 weeks - 75%	14-26 weeks – 100% 27-52 weeks Pre AWE down to 65% (or less, depending on capacity to earn)	14-45 weeks – 100% 46-52 weeks – 75% After 45 weeks maximum of \$1718 (13 November 2008)
Income 52-104 wks (total incapacity)	80% AWE	52-104 wks - Same as 27-52 wks	75% Stat max \$1300	27-104wks – 75% NWE or 70% QOTE	85% 52-78wks 80% 79-104wks	85% (Max 2 x AWE)	75%	25-104 weeks – same as 27-52 weeks	75%
Income 104+ wks (total incapacity)	80% AWE subject to work capacity review	104+ wks - Same as 27-52 wks.	75% Stat max \$1300	104wks- 5 yrs if WRI more than 15%: 75% NWE or 70% QOTE; or otherwise amt = to single pension	80%	85%(+ up to\$50,000 in special circumst's) (Max 2 x AWE)	75%	104 weeks – same as 27-52 weeks	75%
Lump Sums – Maximum	\$420,558	\$231,000 (permanent impairment) + \$50,000 (pain and suffering) (1 Oct 2009)	\$409,200	\$244,710 (permanent impairment) + \$244,710 (>30% impairment) + \$277,205 (grat. Care)	\$222,267	\$168,499	\$220,147.20	\$174,150.28	\$155,960 + \$58,485 non-economic loss (July 2009)
Disputation rate	13.5% (Jan-Mar 09)	6.7% (2006-07)	15.2% (2006-07)	3.5% (2008-09)	7.7% (2005-06)	3.7% (2007-08)	6.0% (2007-08)	not known	8.3% (2005-06)

As at same date for Funding Ratio Covered by statutory Transport Accident Scheme ** Normal weekly earnings ** Premium rates determined by Comcare in June 2008 after consideration of actuary's final premium pool report

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	South Australia	NSW	Victoria	Queensland	Tasmania	WA	NT	ACT	Comcare
Fund type	Central Fund	Managed Fund	Central Fund	Central Fund	Private insurers	Private insurers	Private insurers	Private insurers	Central Fund
Workers covered	680,900 (2007-08)	3,011,008 (2007-08)	2,350,000 (31 Dec 08)	2,147,100 (2008-09)	193,080 (30 June 2007)	919,507 (30 Jun 2007)	116,857 (30 June 2008) (Includes approved insures, self insures and NT Govt Employees)	95,410 (30 June 2007)	353,500 Sept 2008 Commonwealth, ACT Government & self insurers
Self-insurers	68 +Crown -May 09	68 (August 2009)	37 (1 July 2009)	23 (1 July 2009)	16 (30 Jun 2006)	27 (March 2009)	4 +NT P/ Service Apr 08	9 (Jun 07)	27 (September 08)
Average Levy Rate	3.00% - 2009-10 3.00% - 2008-09 3.00% - 2007-08 3.00% - 2006-07 3.00% - 2005-06	1.69% - 1 Jan 2009 1.72% - 1 Jul 2008 1.77% - 1 Jan 2008 1.86% - 1 Jul 2007 1.99% - 1 Jan 2007 2.17% - 1 Jul 2006	1.39% - 2009-10 1.39% - 2008-09 1.46% - 2007-08 1.62% - 2006-07 1.80% - 2005-06 1.99% - 2004-05	1.15% - 2009-10 1.15% - 2008-09 1.15% - 2007-08 1.20% - 2006-07 1.43% - 2005-06 1.55% - 2004-05	1.83% - 2008-09 1.94% - 2007-08 1.95% - 2006-07 2.19% - 2005-06 2.46% - 2004-05	1.58% - 2008-09 1.85% - 2007-08 2.13% - 2006-07 2.32% - 2005-06 2.25% - 2004-05	n/a - 2008-09 2.31% - 2007-08 2.40% - 2006-07 2.70% - 2005-06 2.95% - 2004-05	n/a - 2008-09 n/a - 2007-08 3.15% - 2006-07 3.32% - 2005-06 3.07% - 2004-05	1.36% - 2008-09 1.55% - 2007-08 1.77% - 2006-07 1.77% - 2005-06 1.67% - 2004-05
Max published rate	7.5% (cap) 2007-08	11.672% (30 Jun 2009)	8.581% no cap (2008-09)	6.502% (2009-10)	8.2% (2007-08)	6.5% (2008-09)	None	Not available	N/A -based on exp.
Funding ratio	51.7% (31 Dec 08)	87% (31 Dec 2008)	97% (30 June 2009)	128% (30 June 2009)	168% (2005-06)	129% (2006-07)	110% (June 2007)	Not available	113% (30 June 2008)
Excess/unfunded*	\$1.3b unfunded (30 Dec 2008)	\$1.77b liability (31 Dec 2008)	Assets: \$7,881m Liabilities: \$8,154m (30 June 2009)	\$648 million excess (30 June 2009)	Nil	Not available	Nil	Not available	\$157 million excess
Prudential margin*	5.2%	13% risk margin	8.5%	12.7 % (30 June 2009)	Nil (insurer has own)	Nil (insurer has own)	Nil (insurer has own)	Not available	9.6%
Prudential margin* confidence interval	65%	75% (APRA)	75%	80%	Insurers apply own margins	Insurers apply 75% (APRA)	APRA	75% (APRA)	75%
Journey claims	No	Yes	No	Yes	No	No	No	Yes	No
Common law	No	Yes	Yes – limited	Yes	Yes	Yes	No	Yes	Yes - limited
Income 0-13 wks (total incapacity)	100% AWE	Award CWWR 100% (excl OT) else 80% AWE	95% (AWE to 75%) Stat max \$1300	1-26wks: amt payable under Award; or (not under award) 85%/NWE or 80% of QOTE **	100%	100% (incl allowances max 2 x AWE)	100%	100% AWE	100%
Income 13-52 wks (total incapacity)	13-26 wks 90% AWE 26-52 wks 80% AWE	13-26 wks - Award CWWR – 100% (excl O/T) else 80% AWE. 27-52 wks - < stat rate (+ pay for dep'd spouse /child) or 90% AWE	75% Stat max \$1300	27-52wks – 75% NWE or 70% QOTE	85%	14-26 wks -100% Award wks, 85% for non-Award wks. 27-52 weeks – 85% (Max 2 x AWE)	14-26 weeks - 100% 27-52 weeks - 75%	14-26 weeks – 100% 27-52 weeks Pre AWE down to 65% (or less, depending on capacity to earn)	14-45 weeks – 100% 46-52 weeks – 75% After 45 weeks maximum of \$1718 (13 November 2008)
Income 52-104 wks (total incapacity)	80% AWE	52-104 wks - Same as 27-52 wks	75% Stat max \$1300	27-104wks – 75% NWE or 70% QOTE	85% 52-78wks 80% 79-104wks	85% (Max 2 x AWE)	75%	25-104 weeks – same as 27-52 weeks	75%
Income 104+ wks (total incapacity)	80% AWE subject to work capacity review	104+ wks - Same as 27-52 wks.	75% Stat max \$1300	104wks- 5 yrs if WRI more than 15%: 75% NWE or 70% QOTE; or otherwise amt = to single pension	80%	85%(+ up to \$50,000 in special circumst's) (Max 2 x AWE)	75%	104 weeks – same as 27-52 weeks	75%
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As at same date for Funding Ratio Covered by statutory Transport Accident Scheme ** Normal weekly earnings ** Premium rates determined by Comcare in June 2008 after consideration of actuary's final premium pool report

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