

Your Ref:

Our Ref: Accident Compensation / Tort Law Committee

3 September 2012

The Research Director  
Finance and Administration Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

By email: [fac@parliament.qld.gov.au](mailto:fac@parliament.qld.gov.au)

Dear Research Director

## **OPERATION OF QUEENSLAND'S WORKERS' COMPENSATION SCHEME**

Thank you for providing the Queensland Law Society an opportunity to lodge a comprehensive submission to the Finance and Administration Committee (the Committee) for its Inquiry into the Operation of the Queensland Workers' Compensation scheme (the Scheme).

The Queensland Law Society (the Society) represents about 9,000 legal practitioners throughout our State. Our members represent injured workers, employers and insurers.

The paramount concern of the Society is that the Scheme achieves three objectives. These objectives are:

1. the Scheme is sustainable (which means it is both affordable and prudentially well managed).
2. the Scheme is fair (which means it rehabilitates and, where appropriate, compensates injured workers).
3. the Scheme encourages safer workplaces (which means it promotes good behaviour and actively reduces rates of workplace injuries, preventing claims).

### **The Scheme is sustainable**

It is the position of the Society that the Scheme is the best in the nation by any objective measure. This is due to the short tail nature of the Scheme, principally its unrestricted access to common law to bring finality to claims and to avoid inculcating a 'welfare mentality' amongst claimants.

The Society has observed the trend that long tail liability schemes have higher premium levels or significant unfunded liabilities. These higher premiums or unfunded liabilities are due to the length of time payments are made (that is the "long tail") and the effects of inflation over that period. We note that, for example, in New Zealand a residual claims levy continues to be collected<sup>1</sup> to cover the ongoing costs of

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<sup>1</sup> For 2012 / 13 levy year at \$0.31 per \$100 of wages (excluding GST of 15%)

workplace injuries between 1 April 1974 and 30 June 1999. By way of contrast, in Queensland a claim comes to an end when the worker's injury is stable and stationary or a common law claim is finalised.

Recent claims experience in Queensland is trending positively after the changes to the Scheme in 2010, with reducing common law claim incidence and costs.

### *Key Statistics*

- There are very few claims by injured workers. Of 2.3 million Queensland workers in the workers' compensation scheme, around 4.6% make statutory claims and 0.19% make common law claims.
- Recent changes to the scheme have been successful in stabilising and reducing the cost of open access to common law<sup>2</sup>:
  - numbers of claims are down (9.6% down in 2010 / 11 and a forecast further 2.5% reduction in 2011 / 12 );
  - average costs of common law claims are down (1.4% reduction in 2010 /11 and forecast 6.3% down in 2011 / 12 );
  - specifically comparing claims pre and post the 2010 amendments, average total damages are down by 30% for post amendment claims.
- This year, 16.4% of common law claims were either withdrawn or finalised for no compensation (further reducing the cost burden on the scheme).
- The current WorkerCover premium (\$1.45 for \$100 of wages) is below both the average premium rate of the last 16 years (\$1.48) and the median premium rate of the last 15 years (\$1.55). It is the same rate today as it was in 2005 / 2006. This compares favourably with other jurisdictions, as Queensland's premium has consistently been one of the lowest rates in the nation.

### **The Scheme is fair**

The Scheme is presently very fair as it has a dual focus on returning an injured worker to work and, where relevant, compensating injured workers for loss they have suffered.

It is important to note that the Scheme is comprised of two elements:

1. The statutory benefits process; and
2. The common law claim process.

These two elements dovetail very well and are directed toward two different objectives, but both are directed by the underlying ethos of keeping the Scheme short tail and progressing claims as quickly as possible.

The statutory benefits process is directed toward assisting a worker to recover from his or her injuries and to get back to work as soon as possible. It is designed to provide a period of support while the worker is assisted to recover from his or her injuries and is rehabilitated back into meaningful employment.

The common law claim process fulfils a different role in the overall scheme, which is to compensate those injured workers who have suffered loss as a result of the negligence of their employer. *Negligence arises when a lack of care by an employer results in a reasonably foreseeable injury to a worker.* This test is not fulfilled simply because an injury occurs in the workplace. It requires the employer to have failed to do

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<sup>2</sup> Q-Comp Queensland workers' compensation scheme monitoring Report May 2012

something that a reasonably prudent person would have done. The test for common law negligence is a high hurdle and a check on unmeritorious claims.

In the Scheme common law claims have a two-fold purpose:

- to the extent that is possible, to place an injured worker back in the position they would have been in but for the injury occurring; and
- to deter employers from engaging in negligent workplace practice.

The Society does not support the introduction of an injury impairment assessment threshold for making a common law claim, for various reasons including:

- the current threshold requirement for succeeding in a common law claim is that the employer must have been negligent;
- the impact of an access threshold on the deterrent effect of a common law claim is to send a message that some negligence in workplace health and safety is permissible by implying that some injuries are more negligently caused than others;
- currently there are three injury scales for assessing injuries in workers' compensation claims (WRI - work related impairment, WPI – whole person impairment and ISV – injury scale value), which are not consistent and can produce greatly varying results, ie a 4% limb impairment may translate to a 0% whole person impairment; and
- The introduction of assessment thresholds in other jurisdictions has increased rates of disputation, elongating periods injured workers remain on benefits and increasing costs. The capacity in Queensland to support greater rates of disputation of impairment assessments through the Medical Assessment Tribunals without significant delay is highly doubtful.

#### *Key Statistics*

- The Queensland workers' compensation scheme consistently has lower disputation rates than other schemes (3% in 2009/10 compared to 9.7% in Victoria<sup>3</sup>).
- Disputes are resolved more quickly than in other schemes (81.6% of disputes are resolved within 3 months, compared to 10% in Comcare, 45.3% in NSW and 47.8% in Victoria)<sup>4</sup> This reduces cost to the Scheme as well as the cost to claimants and employers.

#### **The Scheme contributes to safer workplaces**

The best way to reduce premiums and improve outcomes for all participants in the Scheme is to reduce the number of workplace injuries, and for those who do become injured, to ensure that the greatest possible number of injured workers return to meaningful work as soon as possible. This is the best claims outcome and, more importantly, the best social and economic outcome. The Society considers WorkCover has taken positive steps to improve the Scheme in recent years and that more can be done to enhance and strengthen the regime.

The Society is strongly of the view that early and meaningful return to work is a prime dissuader of common law claims. Members report that injured workers who wish to make a common law claim often express the view that they would not have done so if they were meaningfully re-engaged in work.

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<sup>3</sup> Safe Work Australia, Comparative Performance Monitoring Report, 13<sup>th</sup> Edition, page 38

<sup>4</sup> In 2009/10, Safe Work Australia, Comparative Performance Monitoring Report, 13<sup>th</sup> Edition, page 39

It is noted that currently one effect of common law claims is to act as a deterrent for negligence in the workplace, but the Society sees this as only one key element of critically addressing workplace injuries. The Society is of the view that more needs to be done to reduce the rates of injury, through:

- greater emphasis on effective workplace health and safety through regulatory activity, including promoting education and awareness; and
- employers being financially incentivised to improve systems, reduce the numbers of injuries and promote good return to work outcomes by timely rewards through premium reductions and benefits.

The Society sees it as imperative that the premium an employer is levied should be heavily influenced by the employer's recent safety, claims and return to work record. We believe that the power should be placed in employer's hands to positively influence premium outcomes.

The net effect of deterring negligence and promoting good practice in return to work is to make workplaces safer.

#### *Key Statistics*

- Serious injury rates in Queensland have been improving but are still higher than in New South Wales and substantially higher than in Victoria<sup>5</sup>.
- For claimants, the current combined return to work rate of 98.6% for 2011 / 12<sup>6</sup> is exemplary and will flow through to lower rates of common law claims. (This will in turn continue to reduce costs to the scheme in the years to come).

The Society strongly argues that:

- the Queensland Scheme is the best workers' compensation scheme in Australia with sound fundamentals based on the balance between short tail of liabilities and open access to common law;
- WorkCover is in a secure financial position and compares very favourably with comparative schemes;
- more needs to be done to reduce the rates of injury through regulatory activity, education and incentives; and
- there is no justification for structural change to the Scheme.

The Society notes that as the 14th Edition of the Comparative Performance Monitoring Report will be released in mid-September, the Society would like to make a supplementary submission, canvassing the issues raised in that report.

Thank you for the opportunity to provide these comments and observations. The Society would be pleased to respond to any questions from the Committee relating to legal practitioners, or to assist the Committee in any way it can.

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<sup>5</sup> In 2009 / 10 Queensland serious injury rate was 13.8 injuries per 1000 workers, compared to 12.2 in New South Wales and 8.1 in Victoria, source Information Paper to the review, available at

<http://www.parliament.qld.gov.au/documents/committees/FAC/2012/OpQldWorkersComp/ip-20120710-JAG.pdf>

<sup>6</sup> Year-to date figure, Q-Comp Queensland workers' compensation scheme monitoring May 2012, page 9

Please contact our Principal Policy Solicitor, Mr Matt Dunn, on 3842 5889 or via email on [m.dunn@qls.com.au](mailto:m.dunn@qls.com.au).

Yours faithfully

A handwritten signature in black ink, appearing to be 'J. de Groot', enclosed within a large, loopy oval shape.

Dr John de Groot  
**President**

# Submission

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*Inquiry into the Operation of the Queensland Workers' Compensation Scheme*

*Queensland Parliamentary Finance and Administration Committee*

*A Submission of the  
Queensland Law Society*

3 September 2012

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## Statement of Position

1. The paramount concern of the Society is that the Scheme achieves three objectives. These objectives are:
  - a. the scheme is sustainable (which means it is both affordable and prudentially well managed); and
  - b. the scheme is fair (which means it rehabilitates and, where appropriate, compensates injured workers); and
  - c. the scheme encourages workplace safety (which means it promotes good behaviour and actively reduces rates of workplace injuries, preventing claims).

The Society is of the view that these three objectives are being met.

2. The Society strongly argues that:
  - a. the Queensland Scheme fundamentals are sound, based on the short tail of liabilities and open access to common law;
  - b. WorkCover is in a secure financial position and compares very favourably with comparative schemes;
  - c. more needs to be done to reduce the rates of injury through regulatory activity, education and incentives; and
  - d. there is no justification for significant structural change to the Scheme.
3. The Society implacably opposes:
  - a. the introduction of an injury impairment assessment threshold for making a common law damages claim; and
  - b. any change to the definition of injury.

The cost of journey claims on the Scheme is currently steady and modest and as a result the Society cautions against change to entitlement to these claims.

4. There has been success in reducing injury rates but more needs to be done to reduce the rates of injury, through:
  - a. greater emphasis on effective workplace health and safety through regulatory activity, including promoting education and awareness; and
  - b. employers being financially incentivised to improve systems, reduce the numbers of injuries and promote good return to work outcomes by timely rewards through premium reductions and benefits.

5. It is the position of the Society that the inherent strength in the Queensland scheme compared to other schemes is based solely on the balance between statutory benefit entitlements and open access to common law the scheme provides. Experience of other scheme models show that limits on common law access and a greater focus on ongoing benefits leads to a degradation of a scheme's financial position thereby not providing the most sustainable result for scheme participants.
6. The Society is firmly of the view that if no action is currently taken with regard to the Scheme the financial position of WorkCover will continue to improve, one consequence of which will be that premium levels will reduce. The reasons for this include:
  - a. injury rates in Queensland are decreasing;
  - b. return to work rates are increasing;
  - c. the number of common law claims is decreasing;
  - d. the average cost of common law claims is decreasing;
  - e. WorkCover has successfully altered its claims handling procedures and started to focus more heavily on early intervention; and
  - f. actuarial conservatism will decrease as:
    - i. the period of uncertainty following the 2010 reforms passes;
    - ii. underlying assumptions are revised; and
    - iii. claims provisions reduce.
7. Analysis of nil finalisation common law claims needs to be conducted and a collaborative approach adopted to reduce unnecessary intimations. This may require a protocol to be established between the insurers and the legal profession on claim lodgements.

## Introduction

The QLS notes that on 7 June 2012, Mr Ray Stevens, the Manager of Government Business in the House, moved the following motion:

1. That the Finance and Administration Committee inquire into and report on the operation of Queensland's workers' compensation scheme, in particular:
  - (i) the performance of the scheme in meeting its objectives under section 5 of the Act;
  - (ii) how the Queensland workers' compensation scheme compares to the scheme arrangements in other Australian jurisdictions;
  - (iii) WorkCover's current and future financial position and its impact on the Queensland economy, the State's competitiveness and employment growth;
  - (iv) whether the reforms implemented in 2010 have addressed the growth in common law claims and claims cost that was evidenced in the scheme from 2007-08; and
  - (v) whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment.
2. 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.
3. Further, that the committee take public submissions and consult with key industry groups, professionals, and relevant experts.
4. The committee is to report to the Legislative Assembly by 28 February 2013.

The Society will deal with each of the Committee's terms of reference.

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

Relevantly, sections 5(4) and (5) of the *Workers' Compensation and Rehabilitation Act 2003* (WCRA) provide that the objectives of the Scheme are to:

- (a) maintain a balance between—
    - (i) providing fair and appropriate benefits for injured workers or dependants and persons other than workers; and
    - (ii) ensuring reasonable cost levels for employers; and
  - (b) ensure that injured workers or dependants are treated fairly by insurers; and
  - (c) provide for the protection of employers' interests in relation to claims for damages for workers' injuries; and
  - (d) provide for employers and injured workers to participate in effective return to work programs; and
  - (da) provide for workers or prospective workers not to be prejudiced in employment because they have sustained injury to which this Act or a former Act applies; and
  - (e) provide for flexible insurance arrangements suited to the particular needs of industry.
- (4) Because it is in the State's interests that industry remain locally, nationally and internationally competitive, it is intended that compulsory insurance against injury in employment should not impose too heavy a burden on employers and the community.

It is important to note that the "Scheme" is both WorkCover and the self-insurers taken together. It is accepted that WorkCover covers about 90% of workers in the Scheme but is often erroneously seen as a monopoly insurer.

Given that the employment of approximately 10% of Queensland's workforce in the Scheme is in the self-insurance sector, it is quite possible that certain objectives are being met in one part of the Scheme but not in another.

It is the position of the Society that while there are always opportunities to improve the Scheme, the Scheme is presently meeting the objectives of the Act.

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

The submission will deal with this issue by reference to:

- A. the measured outcomes of the Scheme; and
- B. the effect of common law access thresholds in other schemes.

### ***Comparison by Measured Outcomes***

The Society maintains that the two most successful accident compensation Schemes in Australia are those which have no significant restrictions on common law claims – the Queensland Workers' Compensation and Queensland CTP Schemes. These schemes are short tail in nature and this is their inherent strength and the reason for their ongoing success. Conversely, the worst performing Schemes are those in which common law access has been severely restricted (by thresholds and other means) or have entirely abolished common law claims.

The resilience of a short tail workers' compensation scheme based on open access to common law is apparent when relevant jurisdictions are compared by major indicators, such as:

- durable return to work rate;
- disputation rate;
- percentage of disputes resolved within 3 months;
- proportion of scheme expenditure paid to the injured worker; and
- average premium, funding ratio and financial position.

*Durable Return to Work Rate*

Durable return to work rate is a measure of the numbers of workers who received 10 or more days of paid compensation and who returned to work and were still at work seven to nine months after their claim.

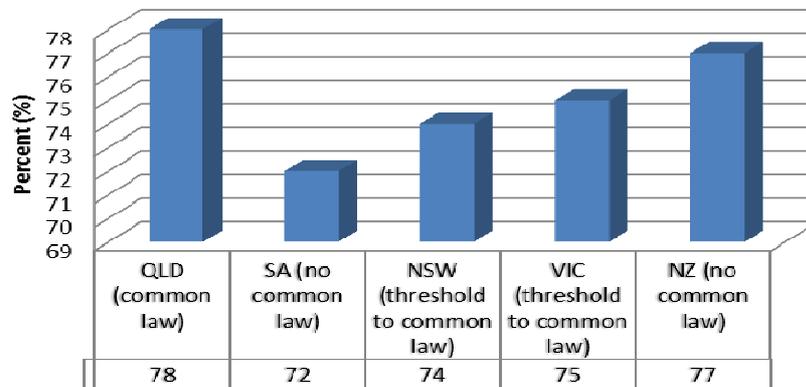


Figure 1: Percentage of Durable Return to Work Rates in Different Jurisdictions for 2009/2010

Jurisdiction	QLD Common Law	SA No Common Law	NSW Threshold to Common Law	VIC Threshold to Common Law	NZ No Common Law
Durable Return to Work Rate <sup>7</sup>	78%	72%	74%	75%	77%

Figure 2: Percentage of Durable Return to Work Rates in Different Jurisdiction for 2009/2010

*Disputation Rate*

Disputation rate is a measure of the number of claims which have had an appeal to a formal dispute mechanism.

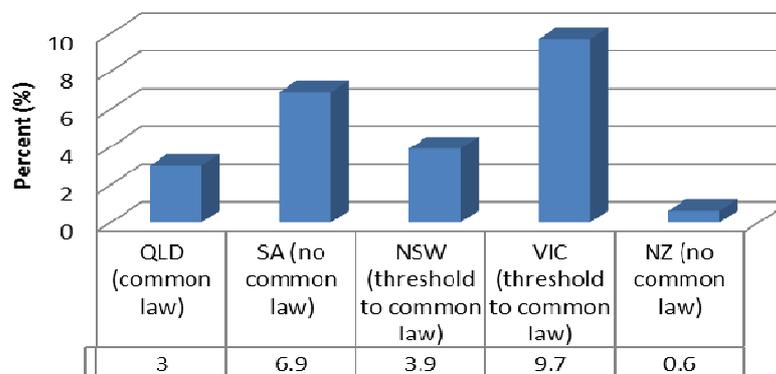


Figure 3: Percentage of Disputation Rate in Different Jurisdictions for 2009/2010

<sup>7</sup> Workplace Relations Ministers' Council, Comparative Performance Monitoring Report, 13<sup>th</sup> Edition, Indicator 21.

Jurisdiction	QLD Common Law	SA No Common Law	NSW Threshold to Common Law	VIC Threshold to Common Law	NZ No Common Law
Disputation Rate <sup>8</sup>	3.0%	6.9%	3.9%	9.7%	0.6% (scheme covers all accidents)

Figure 4: Percentage of Disputation Rate in Different Jurisdictions for 2009/2010

*Disputes Resolved Within 3 Months*

Disputes resolved within 3 months is the percentage of claims with a dispute which are resolved within the stated time period.

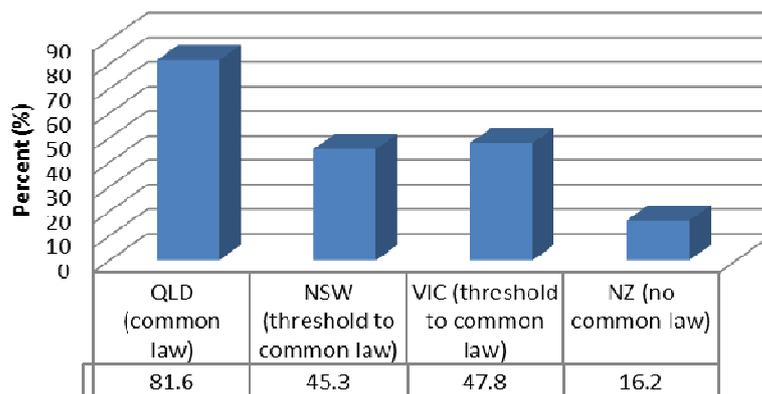


Figure 5: Percentage of Disputes Resolved within 3 Months by Jurisdiction in 2009/2010

Jurisdiction	QLD Common Law	SA No Common Law	NSW Threshold to Common Law	VIC Threshold to Common Law	NZ No Common Law
Disputes Resolved within 3 Months <sup>9</sup>	81.6%	N/A	45.3%	47.8%	16.2%

Figure 6: Percentage of Disputes Resolved within 3 Months by Jurisdiction for 2009/2010

<sup>8</sup> Workplace Relations Ministers' Council, Comparative Performance Monitoring Report, 13<sup>th</sup> Edition, Indicator 22.

<sup>9</sup> Workplace Relations Ministers' Council, Comparative Performance Monitoring Report, 13<sup>th</sup> Edition, Indicator 23.

*Proportion of Scheme Expenditure Paid to the Injured Worker*

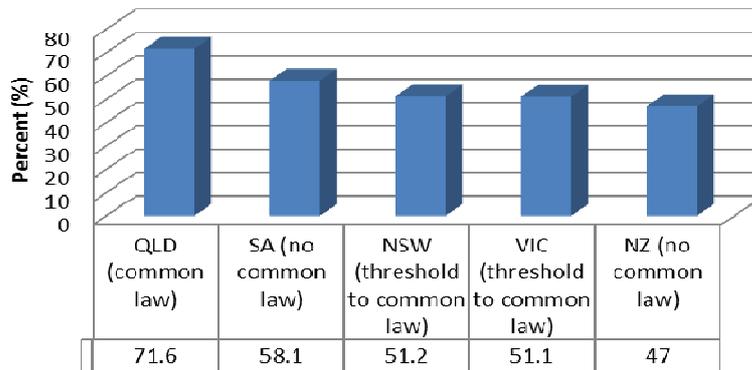


Figure 7: Proportion of Expenditure Paid to the Injured Worker by Jurisdiction for 2009/2010

Jurisdiction	QLD Common Law	SA No Common Law	NSW Threshold to Common Law	VIC Threshold to Common Law	NZ No Common Law
Proportion of Scheme Expenditure Paid to the Injured Worker <sup>10</sup>	71.6%	58.1%	51.2%	51.1%	47.0%

Figure 8: Proportion of Scheme Expenditure Paid to the Injured Worker by Jurisdiction for 2009/2010

Even after the results of the 2011 / 2012 year the Queensland workers' compensation scheme is still expected to have a positive funding rate of 117% - clearly the best of any Australian scheme. In contrast, the South Australian Workers' Compensation Scheme – which completely abolished common law claims some years ago – as at 31 December 2011 was less than 62% funded. The Queensland Scheme currently holds sufficient funds to meet its future claims obligations and is the only centrally funded scheme presently to be in that position. The Scheme in South Australia, with no access to common law claims, maintains the worst record for having sufficient funds to meet its future obligations and currently lacks nearly 40% of the funds to meet those future obligations.

Past experience in New Zealand demonstrates that when unfunded liabilities in an insurance scheme became too great, Government has the choice of either injecting capital into the scheme from the public purse or summarily removing people from the scheme denying them future assistance.

The short tail model of the Queensland Scheme places the Queensland Government in the enviable position of not having to consider either option.

<sup>10</sup> Workplace Relations Ministers' Council, Comparative Performance Monitoring Report, 13<sup>th</sup> Edition, Indicator 19, accessed at <http://www.safeworkaustralia.gov.au/sites/SWA/AboutSafeWorkAustralia/WhatWeDo/Publications/Pages/CPM-13.aspx>

## OPERATION OF QUEENSLAND'S WORKERS' COMPENSATION SCHEME

In addition to external scheme indicators a sense of the inherent strength of different jurisdiction models can be seen in average premium, funding ratio<sup>11</sup> and financial position data.

Jurisdiction	QLD Common Law	SA No Common Law	NSW Threshold to Common Law	VIC Threshold to Common Law	NZ No Common Law
<b>Average Premium<sup>12</sup></b>	\$1.45	\$2.75	\$1.68	\$1.29	\$1.15 <sup>13</sup> excl GST of 15% (\$1.32 inc GST)
<b>Funding ratio<sup>14</sup></b>	117%	61.6%	78%	97%	98.2% <sup>15</sup>
<b>Recent financial position</b>	\$160M profit, no unfunded liabilities <sup>16</sup>	\$30.2M profit, unfunded liabilities \$952M <sup>17</sup>	\$4.083Billion unfunded liabilities <sup>18</sup>	\$641M loss <sup>19</sup>	\$6.7Billion unfunded liabilities <sup>20</sup>

**Figure 9: Average Premium, Funding Ratio and Financial Position by Jurisdiction**

With respect to the Victorian model, it is important to note that the operation of employer excesses is quite different and this undeniably would have an effect on premiums. The 13<sup>th</sup> Edition of the Safe Work Australia, Comparative Monitoring Report explains, at page 46:

However under the Victorian workers' compensation scheme the employer is generally liable for the first 10 days of lost wages by the injured worker plus the first \$592 of medical services (as at 30 September 2010) unless the employer has elected the Excess Buyout option.

The maintenance of the current premium rates in Victoria look questionable given the size of the reported loss for the six months to 31 December 2011 (\$641 Million).

<sup>11</sup> Funding ratio is the measure of current assets of an insurance scheme compared to its liabilities

<sup>12</sup> Appendix 2, Information Paper to the Review, available at

<http://www.parliament.qld.gov.au/documents/committees/FAC/2012/OpQldWorkersComp/ip-20120710-JAG.pdf>

<sup>13</sup> Set prior to General Election at which Government lost, reduced from \$1.47 exclusive of GST in 2011/12, effect of pre-election levy reductions to contribute to \$2Billion worsening of scheme position, see Financial Conditions Report 2011, page 3

<sup>14</sup> Appendix 2, Information Paper to the Review

<sup>15</sup> Forecast for 30 June 2012, from Briefing paper to Incoming Minister February 2012, see

[http://www.acc.co.nz/PRD\\_EXT\\_CSMP/groups/external\\_communications/documents/reference\\_tools/wpc097214.pdf](http://www.acc.co.nz/PRD_EXT_CSMP/groups/external_communications/documents/reference_tools/wpc097214.pdf) page 6

<sup>16</sup> Projected as at 30 June 2012, Information Paper to the Review, page 12

<sup>17</sup> As at 30 June 2011, see <http://www.workcover.com/workcover/workcover/strategic-plan-and-annual-report>

<sup>18</sup> As at 31 December 2011, see <http://www.workcover.nsw.gov.au/formspublications/publications/Documents/workers-compensation-issues-paper.pdf>, page 7. Note that the two greatest sources of outstanding liabilities at that time were weekly payments and medical expenses, at page 8

<sup>19</sup> For 6 months to 31 December 2011, see <http://www.worksafe.vic.gov.au/news/news/half-year-results-confirm-worksafe-scheme-in-strong-position>

<sup>20</sup> Financial Conditions Report 2011, page 3 see

[http://www.acc.co.nz/PRD\\_EXT\\_CSMP/idcplg?IdcService=GET\\_FILE&dID=65334&dDocName=WPC097190&allowInterrupt=1](http://www.acc.co.nz/PRD_EXT_CSMP/idcplg?IdcService=GET_FILE&dID=65334&dDocName=WPC097190&allowInterrupt=1)

The maintenance of the low premium rates in New Zealand look questionable given that the reductions in premiums just prior to the General Elections (\$1.47 ex GST down to \$1.15 ex GST) contributed to a \$2 billion worsening of the ACC position and may prevent any reduction of the \$NZ 6.7 billion in current unfunded liabilities. The ACC has already delayed its anticipated move to full funding from 2014 to 2019 as it was unable to sufficiently reduce its current liabilities and it is expected that the current decisions taken there with regard to premium will further delay this timeframe.

It is the position of the Society that the inherent strength in the Queensland scheme compared to other schemes is based solely on the balance between access to statutory concepts and open access to common law the scheme provides. Experience of other scheme models show that limits on common law access and a greater focus on ongoing long term benefits leads to a degradation of a scheme's financial position thereby not providing the most sustainable result for scheme participants.

Queensland is in the fortunate position that WorkCover:

- has consistently had one of the lowest premiums in Australia and New Zealand;
- is fully funded, with no unfunded liabilities; and
- is presently collecting sufficient funds to meet its future needs.

### ***The Effect of Common Law Access Thresholds***

The Scheme does not suffer from the many issues which plague contemporary schemes which have adopted thresholds for access to common law. There are a number of undesirable results associated with the imposition of thresholds experienced in other jurisdictions, which include:

#### **1) Bracket Creep**

Bracket creep is an acknowledged issue associated with the implementation of thresholds and in this context relates to the potential for claimants whose assessment for their injuries does not qualify them for access to common law claims to seek to inflate their assessment to qualify for the benefit. Bracket creep occurs when the re-rating of a 0% assessment as 1% or a 9% assessment as a 10% assessment.

The effect of 'bracket creep' is to reduce any potential cost reductions to flow from a proposed thresholds as:

- medical examiners giving an assessment just below the threshold amount may be inclined to report a slightly higher value given the knowledge the small difference in assessment will have a substantial impact on the claimant;
- introduction of a threshold at a level where a large number of claimants are affected will significantly increase the effects of bracket creep as the number of claimants intent on inflating their assessment will be larger; and
- a 'cut off' model of threshold brings the greatest impetus to inflate assessments and thereby reduce its effectiveness compared to a sliding scale.

It is accepted actuarial experience that savings from the application of a threshold will **always** be lower than past claims experience and patterns would indicate.

## 2) Type of Threshold

A 'cut off' model threshold based on the AMA Guides, ie setting a percentage impairment for access to common law claims as they have in Victoria or New South Wales, is susceptible to many forms of distortion in its application as:

- the AMA Guides are not definitive;
- the effects of bracket creep are accentuated; and
- the incentive to dispute assessments is heightened.

## 3) Impairment vs. Disability and Using Appropriate Measures

Contemporary common law access thresholds are currently based on an assessment of impairment to the person using a measuring scale based on various versions of the American Medical Association *Guides to the Evaluation of Permanent Impairment* (the Guides). In Queensland three differing assessment scales are currently used at various points in the Scheme:

- Work Related Impairment (WRI), which is based on the 4<sup>th</sup> Edition of the Guides;
- Whole Person Impairment (WPI), which is based on the 5<sup>th</sup> Edition of the Guides; and
- Injury Scale Value (ISV), which is set by regulation based on injury.

Relevantly the Guides state:

**Impairment percentages or ratings** developed by medical specialists are consensus-derived estimates that reflect the severity of the medical condition and the degree to which the impairment decreases an individual's ability to perform common **activities of daily life (ADL)**, *excluding* work. Impairment ratings were designed to reflect functional limitations and not disability. The **whole person impairment percentages** listed in the *Guides* estimate the impact of the impairment on the individual's overall ability to perform activities of daily living, *excluding work* ...

The medical judgement used to determine the original impairment percentages could not account for the diversity or complexity of work but could account for daily activities common to most people. Work is not included in the clinical judgement for impairment percentages for several reasons: (1) work involves many simple and complex activities; (2) work is highly individualized, making generalizations inaccurate; (3) impairment percentages are unchanged for stable conditions, but work and occupations change; and (4) impairments interact with such other factors as the worker's age, education, and prior work experience to determine the extent of work disability. For example, an individual who receives a 30% whole person impairment due to pericardial heart disease is considered from a clinical standpoint to have a 30% reduction in general functioning as represented by a decrease in the ability to perform activities of daily living. For individuals who work in sedentary jobs, there may be little or no decline in their work ability although their overall functioning is decreased. Thus, a 30% impairment rating does not correspond to a 30% reduction in work capability. Similarly, a manual labourer with this 30% impairment rating due to pericardial disease may be completely unable to do his or her job and, thus, may have a 100% work disability.

As a result, impairment ratings are not intended for use as direct determinants of work disability.<sup>21</sup>

The Guides go on to explain the larger issue of work related disability:

The *Guides* continues to define **disability as an alteration of an individual's capacity to meet personal, social, or occupational demands or statutory or regulatory requirements because of an impairment**. An individual can have a disability in performing a specific work activity but not have a disability in any other social role ...

The impairment evaluation, however, is only one aspect of disability determination. A disability determination also includes information about the individual's skills, education, job history, adaptability, age, and environment requirements and modifications. Assessing these factors can provide a more realistic picture of the effects of the impairment on the ability to perform complex work and social activities ...

As discussed in this Chapter ... medical impairments are not related to disability in a linear fashion. An individual with a medical impairment can have no disability for some occupations, yet be very disabled for others. For example, severe degenerative disk disease may impair the functioning of the spine of both a licensed practical nurse and a bank president in a similar fashion when performing their activities of daily living. However, in terms of occupation, the bank president is less likely to be disabled by this impairment than the licensed practical nurse. An individual who develops rheumatoid arthritis may be disabled from work as a tailor but may be able to work as a child care aide. A pilot who develops a visual impairment, correctable by glasses, may be able to perform all of their daily activities but is no longer able to fly a commercial plane. An individual with repeated hernias and repairs may no longer be able to lift more than 20 kg (40 lbs) but could work in a factory where mechanical lifts are available.

The *Guides* are not to be used for direct estimates of work disability. Impairment percentages derived from the *Guides* criteria do not measure work disability. Therefore, it is inappropriate to use the *Guides*' criteria or ratings to make direct estimates of work disability<sup>22</sup>.

The assessment of impairment using the Guides does not necessarily give a true indication of work disability. The focus on impairment is generalised, while the focus of work disability is unique to individuals and their circumstances. A small impairment may translate into great work disability and conversely a large impairment may translate to only a small work disability, depending on the nature of the work conducted by the individual. The impact of injury on an individual can be far more significant than an impairment assessment might indicate. The Society can provide examples from the experience of our members which illustrate the impact of injury.

The Guides admit that injury ratings are consensus-derived estimates only. The medical profession is well aware that the process of assessment can not be completely objective and can also not be completely definitive.

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<sup>21</sup> AMA, *Guides to the Evaluation of Permanent Impairment*, fifth edition, pages 4 - 5

<sup>22</sup> AMA, *Guides to the Evaluation of Permanent Impairment*, fifth edition, pages 8 - 9

Experience from other jurisdictions shows that access thresholds based on an impairment assessment are highly disputed and can be prejudicial as they do not appropriately focus on work disability to the individual.

#### 4) Increased Disputation

Given the substantial financial effect on the claimant of the 'cut-off' threshold the potential for dispute is heightened. This may manifest itself in increased rates of disputes with insurers or increased rates of referrals to the Medical Assessment Tribunals (MAT). The Queensland workers' compensation scheme has prided itself on its low disputation rates and in the last five years the rate of referrals to the MAT have been steadily declining. In all likelihood the application of a threshold for access to common law claims would reverse these trends as the consequences flowing from only a small re-assessment of impairment may be very significant.

It has been widely acknowledged that the implementation of thresholds introduces greater disputation into any scheme as cases at or near the threshold amount will often be disputed. This is especially the case where medical assessments, based on subjective opinions of incapacity, will vary greatly depending on the practitioners involved. Greater costs will flow from enhanced rates of disputation of medical reports and assessments, as well as from appeals arising from such assessments.

Experience from other jurisdictions shows that greater disputation rates flow from schemes where a threshold is applied for access to common law claims or where common law is abolished altogether.

Jurisdiction	QLD Common Law	SA No Common Law	NSW Threshold to Common Law	VIC Threshold to Common Law	Comcare No Common Law
<b>Disputation Rates<sup>23</sup></b>	3.0%	6.9%	3.9%	9.7%	4.3%

Figure 10: Disputation Rates By Jurisdiction during 2009/2010

For the calendar year 2008 the NSW Workers Compensation Commission reports that 73% of its 12,076 referred disputes related to a claim for permanent impairment compensation. In addition to these disputes 567 matters were taken directly to their Medical Appeal processes<sup>24</sup>. In total around 5315 disputes in 2011 related to medical assessments and impairments directly.

In Victoria, the Accident Compensation Conciliation Service reported that in 2010 / 2011 it received 15256 disputes. Of this, 6024 referrals were relating to medical issues and 6004 referrals related to rejection and termination of claims<sup>25</sup>.

<sup>23</sup> Workplace Relations Ministers' Council, Comparative Performance Monitoring Report, 13<sup>th</sup> Edition, page 38, for 2009 / 10

<sup>24</sup> Workers Compensation Commission Annual Review 2011, pages 32 - 33

<sup>25</sup> Accident Compensation Conciliation Service Annual Report 2010 / 2011 page 3

Conversely, in Queensland a significant downward trend is being experienced by the Medical Assessment Tribunals, receiving only 2,522 referrals in 2010 / 2011<sup>26</sup>. Of this number 53% related to permanent assessments, including 524 for primary assessment and 620 in disputed assessments.

The heightened levels of disputes relating to threshold issues found in other jurisdictions clearly demonstrates that there is the potential for the application of thresholds to de-stabilise the overall dispute culture of the scheme in Queensland. Greater levels of disputation in a scheme must lead in to increased costs in scheme administration, defeating the original rationale for the imposition of the threshold.

The introduction of assessment thresholds in other jurisdictions has resulted in increased rates of disputation, elongating periods injured workers remain on benefits and increasing costs. In Queensland the capacity to support greater rates of disputation of impairment assessments through the Medical Assessment Tribunals without significant delay is questionable given that Q-Comp reports that the current MAT membership has exhausted the current pool of potential qualified medical practitioner candidates.

## **5) Operational Costs**

It is accepted that operational costs of the scheme will increase as the result of the application of a threshold as insurers would need to:

- implement threshold management strategies to attempt to mitigate the effects of the risks mentioned above;
- resource appropriately the increased disputation processes; and
- monitor and measure the impact of the changes.

### ***Summary***

The Queensland Scheme compares very favourably against other schemes owing to its well-funded nature, its relatively short tail approach and the absence of an artificial threshold for the bringing of a common law claim.

The current Queensland Scheme composition is leading the nation in its effectiveness and efficiency and prior to contemplating any significant reform based on any other existing model, an extensive consideration must be undertaken of any weaknesses and uncertainty which will be introduced as a result.

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<sup>26</sup> Q-Comp Statistics Report 10 / 11, p49

## **WorkCover's current and future financial position**

The current financial position of WorkCover is set out in some detail in the Information Paper prepared for the Inquiry.

### ***Current Position***

We note that in terms of performance WorkCover has performed, and continues to perform very well when compared with comparable authorities. It is most notable that throughout recent years WorkCover has consistently performed better than those comparable authorities and has maintained full funding throughout that period.

Queensland WorkCover has never been in the recent position of other comparable schemes:

- \$NZ6.7 Billion unfunded liabilities in the New Zealand scheme;
- \$4.083 Billion unfunded liabilities in the New South Wales scheme;
- \$1.42 Billion loss in the 6 months to 31 December 2008 in the Victorian scheme;
- \$952 Million unfunded liabilities in the South Australian scheme;
- \$780 Million loss in 2011 / 12 year in the New South Wales scheme; and
- \$641 Million loss in the 6 months to 31 December 2011 in the Victorian scheme.

These results need to be contrasted with the current forecast results for WorkCover Queensland for the 2011 / 12 year:

- \$160 Million surplus;
- Positive equity position of \$520 Million;
- 117% funding of liabilities; and
- March 2012 reduction of additional capital requirements from \$328 Million down to \$50 Million as a result of reduced average common law claims sizes and reduced numbers of claims.

### ***Future Position***

The Society is firmly of the view that, if no action is currently taken with regard to the Scheme, the financial position of WorkCover will continue to improve and premium levels will reduce.

The reasons for this include:

- The full effect of the 2010 changes are not yet evident and will not be for two to three years;
- injury rates in Queensland are decreasing;
- return to work rates are increasing;
- the number of common law claims is decreasing;

- the average cost of common law claims is decreasing;
- WorkCover has successfully altered its claims handling procedures and started to focus more heavily on early intervention; and
- actuarial conservatism will decrease as:
  - the period of uncertainty following the 2010 reforms passes;
  - underlying assumptions are revised; and
  - claims provisions reduce.

**Injury Rates**

The incidence rates for serious compensated injury and musculoskeletal claims has witnessed a 16.9% improvement<sup>27</sup> since 2006 / 07, which has resulted in a 13.8% rate of claims per 1000 employees. The reduction in injury rates is important as fewer injuries occurring in workplaces should mean that fewer claims are made, both statutory and common law. This is to the direct benefit of the Scheme.

It is accepted that improvements in injury rates usually translate into a reduction in claims at the lower severities ranges initially.

While the incidence rates for claims has been improving in Queensland much has been done in other jurisdictions to reduce injury rates even further. Significant effort has been dedicated in Victoria to reducing the incidence of claims resulting in an injury rate of only 8.1% in 2009 / 10<sup>28</sup> compared with Queensland's 13.8%. The work health and safety compliance and enforcement activity of the two jurisdictions can be compared:

State	Number of proactive workplace visits	Number of workplace reactive visits and other reactive interventions	Number of active field inspectors	Number of infringement, improvement and prohibition notices issues	Number of legal proceedings finalised	Number of legal proceedings resulting in a conviction, order or agreement	Total amount of fines awarded
QLD	25,558	16,693	221	11,727	96	85	\$3,812,000
VIC	28,104	16,514	255	22,528	149	130	\$7,674,000

**Figure 11: Work Health and Safety Compliance and Enforcement Activity 2009/2010**

While Victoria returns a better injury rate than Queensland, it appears that there is also a higher degree of regulation and enforcement activity. This is particularly seen in the case of infringement, improvement and prohibition notices where Queensland's activity only represents 52% of that of Victoria.

<sup>27</sup> Information Paper to the Review, page 17

<sup>28</sup> Information Paper to the Review, page 17

If more is done to reduce the incidence of injury in Queensland, this will translate into a stronger financial position for WorkCover and better premium outcomes for employers. This was demonstrated by an example used by Mr Tony Hawkins, CEO of WorkCover at the Public Hearing on 11 July 2012:

I can quote an example of a particular employer whom I like to quote. They came to us several years ago and I am happy to say it was in the meat industry. I will not identify the employer, but it was in the meat industry. They had a very, very poor claims experience. Obviously the reason that the CEO came to see us was that their premium was up. CEOs tend to have a driver that not always is workplace health and safety, although now, through initiatives like Zero Harm at Work it is very good.

This individual CEO came to us and said, 'How and what do we need to do?' He brought along with him, as you said, a good workplace health and safety person. They addressed those issues over the next 12 to 18 months and their premium plummeted. It absolutely plummeted. What happened? That organisation was purchased and acquired by another organisation which did not put the same emphasis on workplace health and safety, and within 12 to 18 months their premium was back up to where it was. I think the answer to your question is, yes, if you have good internal workplace health and safety mechanisms, they will benefit the organisation.<sup>29</sup>

### ***Return to Work Rates***

QLS is strongly of the view that early and meaningful return to work is a prime dissuader of common law claims. Members report that injured workers who wish to make a common law claim often express the view that they would not have done so if they had been, or could be, meaningfully re-engaged in work.

In recent years WorkCover has witnessed a very strong improvement in return to work outcomes. The current combined return to work rate of 98.6% for 2011 / 12<sup>30</sup> is exemplary and will flow through to lower rates of common law claims (this will continue to reduce costs to the scheme in the years to come). To illustrate this improvement, in 2010 / 11 the return to work rate was 95.3%<sup>31</sup>.

Improvements in the durable and meaningful return to work outcome in Queensland will have a continuing positive effect on common law claims rates in the years to come.

### ***Common Law Claims***

The change in common law claims experience is discussed under the next heading item specifically.

A reduction in the number and average cost of common law claims flows through to reduced provisions for claims liabilities which in turn translates into a lower premium pool and can have downward pressure on general premium levels.

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<sup>29</sup> Finance and Administration Committee, Public Hearing, 11 July 2012, transcript page 10, available at <http://www.parliament.qld.gov.au/documents/committees/FAC/2012/OpQldWorkersComp/bt-11Jul2012.pdf>

<sup>30</sup> Year-to date figure, Q-Comp Queensland workers' compensation scheme monitoring May 2012, page 9

<sup>31</sup> Information Paper to the Review, page 31

One aspect of the current common law claims mix which needs to be addressed is to find a way to remove the extensive number of common law claims which currently settle for nil compensation. Growing from 12.3% of claims in 2009/10 to 16.4% of claims in 2011/12<sup>32</sup>, there is now a very significant proportion of claims that end up costing nothing but which distort actuarial risk provisioning calculations as well as increasing administrative cost. Of the current year numbers 9.2% (364) of claims are withdrawn claims and many appear to be have been lodged as the statutory limitation period<sup>33</sup> was approaching and were subsequently not proceeded with. Many of these claims are associated with another existing claim.

While nil finalisation claims do not add additional cost to the premium pool, there is an administrative impost in filing and processing such claims. The Society recommends that analysis of nil finalisation claims needs to be conducted and a collaborative approach undertaken to reduce unnecessary intimations.

### ***Claims Handling and Early Intervention***

Flowing from the Structural Review of Institutional and Working Arrangements in Queensland's Workers' Compensation Scheme by Mr Robin Stewart-Crompton, WorkCover has implemented a number of claims handling process changes which have had a positive impact on its future financial position.

Anecdotal evidence from our members indicates that WorkCover has changed the way it looks at settlement of a claim and has better aligned that with the merits of the individual claim, rather than the benefit to the central fund of a speedy resolution. This new practice appears to have contributed to a reduction in average common law claim settlements.

WorkCover has also commenced other initiatives to undertake intervention at an earlier stage in the claims process to produce better return to work outcomes. One such program is the development of the Orthopaedic Comprehensive Reporting Process, which seeks to have a comprehensive clinical report (CCR) obtained in all claims where the worker has been seen by an Orthopaedic Specialist. The report includes a complete clinical pathway of the injury. The commendable objective of this WorkCover initiative, is to:

1. obtain better information upfront for earlier decision making and improved engagement with treating Orthopaedic Specialists;
2. use external rehab consultants to manage RTW;
3. reduce administrative burden on treating Orthopaedic Specialists by removing the need for ongoing Workers' Compensation Medical Certificates; and

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<sup>32</sup> Q-Comp Queensland workers' compensation scheme monitoring May 2012, page 36

<sup>33</sup> The *Limitation of Actions Act 1974*, s11, provides that common law claims for personal injuries must be commenced within 3 years from the date the cause of action arose (such as the date of injury).

4. allow the Customer Advisor<sup>34</sup> to plan and manage the injured worker and the compensation process to assist the worker to return to life and work as quickly as possible.

This initiative, and ones like it, are directed toward taking steps early in the life of a claim to best direct it to a meaningful return to work outcome as quickly as possible. One benefit of such an early intervention program such as the Orthopaedic CCR is to determine at an early stage whether the injured worker will be capable of returning to their job pre injury or whether they should be rehabilitated into alternative duties. Assessing whether alternative duties will be necessary at an early stage is a profoundly beneficial initiative as it will promote better durable return to work outcomes which in turn reduces one of the drivers of common law claims.

We recommend that consideration be given to WorkCover using external rehabilitation consultants in appropriate cases to enhance the prospects of effective return to work outcomes. A renewed focus on early assistance in a claim ultimately benefits the injured worker and also the Scheme through reduced administration and compensation costs and the utility of a good social and economic outcome.

### ***Actuarial Conservatism Following Scheme Changes***

It is accepted practice in actuarial work (and a natural response) to adopt a conservative approach to estimates when considering the effect of change. When changes are made to any insurance model, there is a period of uncertainty following the change when it is difficult to predict what the outcome of the change may be. This often causes actuaries to become more conservative in their estimates or to increase risk provisions to attempt to ensure that there will be sufficient reserves to meet any claims outcome. This is not contrived, but rather a prudent response to uncertainty.

The Scheme underwent some not insignificant change in 2010 and the effects of that change are only now beginning to be clearly seen in terms of claims rates and average settlement amounts. Following significant change to a scheme, claims liabilities are often estimated at the highest level and provisions are larger than perhaps they could be to insure against the uncertainty of claims outcomes. Often any change to an insurance scheme will see provisions increase in the short term while the uncertainty of the effect of the change is observed. This can lead to a result where changes designed to reduced costs to a scheme can put inflationary pressure on premiums until any uncertainty about the effects of the change is resolved.

Data from stakeholder actuarial presentations for the Queensland workers' compensation system demonstrates how this natural conservatism plays out in Scheme assumptions.

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<sup>34</sup> Customer Advisors in WorkCover were previously known as case managers but were rebranded earlier this year to reflect the dynamic role they play in facilitating return to work outcomes for the worker and employer. The title, 'Customer Adviser', was chosen to reflect the 'one-stop shop' nature of their role in advancing mutually beneficial return to work outcomes, which balance the needs of injured workers and employers. See <http://www.workcoverqld.com.au/news/2012/return-to-work-matters-article-change-of-name,-change-of-outlook>

	2011 Injury Year Common Law Claims (WorkCover)	Intimations	2012 Injury Year Common Law Claims (WorkCover)	Intimations
November 2010 Presentation	Forecast = 4282			
May 2011 Presentation	Forecast = 3914			
November 2011 Presentation	Actual = 3818		Forecast = 4120	
May 2012 Presentation			Forecast = 3857	

Figure 12: Stakeholder Actuarial Presentation - Common Law Claims Intimations (WorkCover)

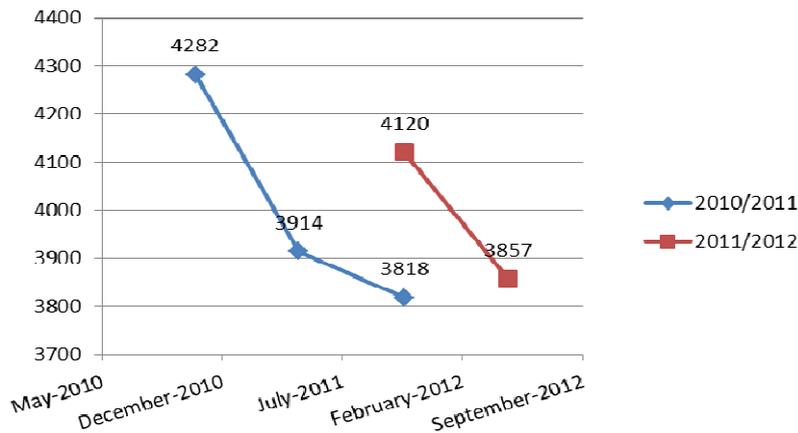


Figure 13: Stakeholder Actuarial Presentation - Common Law Claims Intimations (WorkCover)

The decreasing trend from the estimates to the actual result is apparent for the 2011 and 2012 years as experience of claims intimations is lower than initially thought.

The May 2012 WorkCover stakeholder actuarial presentation revealed that in the 24 month period to 30 June 2012 the actual number of common law claims intimated was 5,760, while the expected number was 6,363. This represents a 9% lower than expected result for the intimation of claims over that period. Higher claims estimates will result in the collection of additional premium which may prove to be unnecessary and be able to be released to meet other expenses, improve the capital position or reduce future premiums.

In March 2012 the additional provision for claims liabilities was revised down from \$328 Million to \$50 Million as expected claims sizes were reduced and projections of ultimate numbers of claims was similarly downsized. As the effective trends of the legislative changes in 2010 become clearer, the actuarial job of prognosticating future outcomes becomes more certain and previous estimates can be revised down.

The Society expects that for this reason alone we will see the future financial position of WorkCover strengthen as it becomes apparent that more provision has been made for current claims than was actually necessary (although the provision was reasonable at the time of collection given what was known and certain). We expect that the continuing reduction in claims experience will continue to have a

positive impact on the actuarial estimate of the claims liability for the foreseeable future. This impact will translate into downward pressure on premiums.

## **Whether the reforms implemented in 2010 have addressed the growth in common law claims and claims cost**

In 2010 there were a large number of significant changes made to the Scheme to address the perceived growth in common law claims. Experience has shown that the growth in claims which was expected did not occur. This is in part due to the 2010 changes and in part due to other external factors such as the economic cycle and improvements to injury rates and return to work outcomes which have been ongoing. It is however possible that common law claims rates would have decreased in number irrespective of the 2010 legislative changes as part of a correcting trend.

### ***Common Law Claims Cost***

Objectively, Q-Comp<sup>35</sup> has reported that the caps on the amount of general damages have reduced the costs of the applicable claims finalised. Average damages paid for pre scheme reform claims has reduced from \$129,139 to \$92,581 (a reduction of 28%). Awards for average general damages have reduced from \$34,303 to \$12,939 for pre and post scheme reform claims (a reduction of 62%).

Q-Comp data<sup>36</sup> indicates that future economic loss awards have also decreased, in the case of 0% WRI<sup>37</sup> claims, pre-reform average damages of \$98,584 have reduced to \$59,777 (a reduction of 39%), and notably average awards for future economic loss have reduced from \$63,036 to \$43,530 (a reduction of 30%). Similar reductions appear to be occurring at all levels of severity.

When claims from the pre and post reform period are considered together, total average costs have decreased for 2011 / 12 from the previous year by 5.8% or 8.7% when the effects of inflation are considered. In fact the inflation adjusted average common law claims cost has decreased by nearly \$17,000 since 2009 / 10<sup>38</sup>.

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<sup>35</sup> Q-Comp, Queensland workers' compensation claims monitoring report, May 2012, page 37

<sup>36</sup> Q-Comp, Queensland workers' compensation claims monitoring report, May 2012, page 38

<sup>37</sup> Work Related Impairment (WRI) scale

<sup>38</sup> Q-Comp, Queensland workers' compensation claims monitoring report, May 2012, page 30

Type of Damages / Award	Pre-Reform Average	Post-Reform Average	Total Reduction in Average Damages / Award
Average Damages	\$129,139	\$92,581	28%
Average Awards for General Damages	\$34,303	\$12,939	62%
Average Damages for Future Economic Loss (0% WRI Claims)	\$98,584	\$59,777	39%
Average Awards for Future Economic Loss Awards (0% WRI Claims)	\$63,036	\$43,530	30%

Figure 14: Common Law Claims Costs - Pre and Post Reform

### Numbers of Common Law Claims

The number of common law claims has reduced by 9.6% following the amendments made in 2010. In fact the trend for claim numbers continues to decrease and the initial prediction for the 2011 / 12 year has had to be revised down, resulting in a further 2.5% reduction for that year.



Figure 15: Number of Common Law Claims in Queensland by Year

### Effect of Reductions in Claims Numbers and Cost

The effect of the observed reduction in the number and average cost of common law claims has led to WorkCover actuarial estimates in March this year being revised down so that the additional provision for claims liabilities was revised to \$50 Million down from \$328 Million, in effect an 85% reduction.

This is a very concrete example of how the reforms implemented in 2010 have addressed the growth in common law claims and claims cost.

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

The Society opposes any increase in the number of self-insurers.

Our members who act for claimants report that, amongst the cohort of 25 self-insurers, there are varying standards and approaches to claims and claimants.

The Society also notes that the strength of the central fund model is to pool all risks together for the overall benefit of industry. Wantonly changing the mix of risk profiles in the central fund has the potential to significantly increase premiums for those who remain (usually small to medium enterprises that lack the resources to manage their own workers' compensation matters independently). We urge that any change to the current self-insurance arrangements is carefully considered.

Prior to making any changes to the current self-insurance eligibility arrangements, an in-depth review of the effect on the Scheme should be undertaken as well as an assessment of the performance of existing self-insurers with respect to rehabilitation, durable return to work outcomes and the conduct of common law claims. . This review would need to be informed by actuarial analysis to ensure that the effect of the change leaves the centrally funded scheme sustainable and does not cause premiums to spike for the remaining employers. The Society suggests that if change is thought to be needed regarding eligibility requirements that a separate and detailed enquiry is undertaken given the consequences and complexity of change to the current balance.

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

The Society was an active participant in the review undertaken by Mr Robin Stewart-Compton of the institutional and working arrangements of the Scheme.

### ***Transparency and Stakeholder Presentation Recommendations***

The Society lobbied for greater transparency in the provision of financial information about the Scheme for stakeholders and commended recommendations that biennial stakeholder actuarial presentations should be made. WorkCover and Q-Comp have collaborated to deliver these presentations and to make their actuaries available for questions during the sessions. The Society has attended every presentation and has found them to be immensely useful in understanding the current position of the Scheme as well as the actuarial position of WorkCover.

The Society has seen similar presentations work for many years in the motor accident insurance scheme and is confident that the ongoing disclosure will ensure good governance and mutual trust between

stakeholders of the Scheme. The Society fully supports the role of the MAIC in respect of the governance of the CTP scheme and supports an increased role for Q-Comp in respect of the governance of the workers' compensation scheme in Queensland.

### ***Claims Handling and Management Recommendations***

These items were discussed above under the future financial position of WorkCover and are seen as an integral positive step in securing its strong future financial position.

The Society has especially appreciated the regular stakeholder forums and meetings to discuss relevant and contemporary issues with WorkCover representatives.

### ***Legal Costs and Management of the Legal Profession Recommendations***

The Society expressed the view that a survey of legal costs and additional disclosure obligation was not warranted. That view remains. It was noted that neither the Society, nor the Legal Services Commission, had any evidence suggesting systemic overcharging and that the *Legal Profession Act 2007* already sets out a thorough and prescriptive regulatory regime with respect to legal costs. The Act currently provides for disclosure to clients and also limits the amount that a lawyer can recover for fees in speculative personal injury matters. Queensland is the only jurisdiction in the country where there is a cap on legal fees for speculative personal injury matters.

### ***Focus on Return to Work Recommendations***

The Society supported initiatives proposed in the Structural Review to improve return to work outcomes. Following implementation of recommendations from the Review and also the collaboration between Q-Comp and WorkCover the current return to rate of 98.5% is a positive indication of progress being made in this area.

A focus on meaningful return to work outcomes as well as early rehabilitation intervention and treatment has a strong influence on claims experience and on the premiums payable. Good return to work outcomes and injury prevention are the strongest tools available to effect well-rounded and positive outcomes for all participants in the workers' compensation scheme.

## **Other Observations**

### *Journey Claims*

The Society notes that Journey claims are available in the ACT and Queensland, as is open access to common law claims. The role of journey claims in the Scheme is to address the public interest purpose in ensuring that workers are not prejudiced by injuries sustained during work-related travel. This is of particular importance for injured workers in regional Queensland for a number of reasons, which include:

- there is less reliance by workers on public transport infrastructure than in the major cities;

- there are generally greater distances to traverse to places of employment;
- workers who 'fly-in / fly-out' and 'drive-in / drive-out' to employment in remote and regional locations can spend a great deal of time engaged in such travel and in related infrastructure such as airports; and
- not all work related journeys are conducted in vehicles covered by the CTP scheme for motor vehicles (such as aircraft, ferries or private vehicles used solely on large grazing properties). The consequence of this may be that an injured worker's only compensation entitlement may be to make a journey claim.

We also note that journey claims do not affect the Experience Based Rating of an employer and therefore do not escalate their individual premium. Journey claims are funded from the general premium paid by employers and also can be the subject of contributions from the motor accident insurance scheme where the injury occurs in circumstances which give rise to an entitlement to make a compulsory third party insurance claim.

The cost of journey claims on the Scheme is currently steady and modest and as a result the Society cautions against change to entitlement to these claims.