



CCIQ SUBMISSION

**Five-year review of Workers' Compensation
Scheme**

Office of Industrial Relations

CHAMBER OF COMMERCE AND INDUSTRY QUEENSLAND

4 April 2018

Introduction

1. The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to provide feedback to the Reviewer of the Workers' Compensation Scheme (the Scheme) as part of the legislated five yearly review, outlined under section 584A of the Workers' Compensation and Rehabilitation Act 2003 (the Act). The Terms of Reference (ToR) for the review are as follows:
 - a. The performance of the scheme in meeting the objectives under section 5 of the Act, including:
 - i. maintaining a balance between providing fair and appropriate benefits for injured workers or dependants and persons other than workers, and ensuring reasonable cost levels for employers;
 - ii. ensuring that injured workers or dependants are treated fairly by insurers;
 - iii. providing for the protection of employers' interests in relation to claims for damages for workers' injuries; and
 - iv. providing for employers and injured workers to participate in effective return to work programs.
 - b. Emerging issues facing the Queensland workers' compensation scheme.
 - c. The effectiveness of current rehabilitation and return to work programs and policy settings, including ways to increase Queensland's current return to work rate.
2. CCIQ is Queensland's peak industry representative organisation for small and medium businesses. We represent over 426,000 Queensland businesses on local, state, and federal issues that matter to them. Our guiding focus is to develop and advocate policies that are in the best interests of Queensland businesses, the Queensland economy, and the Queensland community.
3. CCIQ is committed to achieving the best practice workers' compensation arrangements for the protection of employers and workers. This includes maintaining a financially sound insurer in WorkCover Queensland that adequately protects employers and workers against genuine work-related injuries at affordable and competitive premiums.
4. This submission will focus on the abolishment of the common law compensation threshold, the handling of cases by the regulator and the resulting decision, and creating a fairer and more equitable scheme.

Reinstate the DPI > 5% Threshold

5. Prior to the *Workers' Compensation and Other Legislation Amendment Act 2015*, Queensland had a degree of permanent impairment (DPI) threshold to access common law damages for injuries which occurred during the execution of employment duties. This system provided a clear and transparent understanding of employees' compensation for a workplace accident and expediated progress of workers returning to work. Since the removal of the threshold, employees are able to seek common law damages for any level of

DPI. Due to the litigious and lengthy nature of the common law process, employees must demonstrate incapacity for a continuing period of over 12 months. This prevents workers returning to work, placing added stress on businesses, families, and the legal system. This is not a desirable outcome for any of the parties involved.

6. The previous position was considered reasonable and restrained when compared to other states with DPI thresholds, such as New South Wales and Tasmania, whom both have higher levels set at 15% and 20% respectfully.¹ At one time or another most states have had a DPI threshold in place. Unfortunately, it has become a 'political football'. An independent review of the scheme provides the opportunity to review the benefits and risks of having a DPI threshold.
7. CCIQ understands that sometimes a worker must seek recourse through common law. In this respect, our policy position does not seek to deny access to compensation for workers who have significant ongoing impairment. Rather, we believe this issue must be considered against achieving the most efficient means of delivering fair outcomes for all stakeholders and claims resolution.

Recommendation: Review costs, and return to work statistics since the removal of the threshold and recommend reinstatement of the threshold.

Consistent Case Advisors

8. CCIQ members have expressed frustration with the internal processes of the scheme which they believe hamper progress of claims and increase red tape in the processing of a claim. For example, a member stated they lodged two workers compensation claims in the same week. They were assigned two different case advisors who operated differently creating confusion, which resulted in opaque expectations for the member during the process.
9. CCIQ members would like to see dedicated advisors for their businesses, especially if they have lodged multiple claims. This will reduce processing times as both the business and advisor will be more familiar with the stakeholders involved, and will establish greater trust and rapport, leading to a more efficient relationship and processes.
10. 47 per cent of CCIQ members indicated that the workers' compensation scheme created a moderate to high regulatory burden on their businesses.² Work health and safety and general industrial relation dealings have risen in the past two years in terms of regulatory burden for small business.
11. As 85 per cent of small businesses do not have a dedicated employee to handle workers' compensation and work, health and safety matters this is a further time and cost impost on

¹ Safe Work Australia, 2017, Comparison of workers' compensation arrangements in Australia and New Zealand, 25th edition, table 4.6, pg 122, https://www.safeworkaustralia.gov.au/system/files/documents/1801/comparison-of-workers-compensation-arrangements-australia-new-zealand-2017_0_1.pdf

² <https://www.cciq.com.au/assets/Advocacy/Red-Tape/CCIQ-Red-Tape-Survey-2017-screen.pdf>

the owner and operator, putting a handbrake on investment and business growth. This has a longer-term impact to the greater economy.

12. By introducing case advisors who are either sectoral specialists or permanently assigned to certain businesses with multiple claims, a relationship and understanding will be developed and preliminary processes will be expediated. Members have raised concerns that they feel they do not have reliable avenues of support or information to turn to in the event of an incident. Implementation of this strategy will go towards capacity building the workers' compensation scheme as the trusted source of information and assistance.

Recommendation: Review internal processes, claims assignment and management to create expediency, and reduce red tape.

Reasons for Decision

13. CCIQ members have also expressed concern regarding the reason for decision (RFD) document and process in relation to reviews and consistency of decisions. CCIQ believes the RFD should be released as a mandatory requirement to all employers. This will potentially shorten a review process by 25 days.
14. Employers believe there to be occasions where the RFD has clearly identified fraudulent basis of claim, and yet have still awarded compensation. CCIQ would like to see greater resources devoted to the initial investigation, with greater transparency and objectivity.
15. CCIQ would recommend industry specific, published, criteria be provided to employers, employees and assessors to ensure there is an agreed understanding of knowledge across stakeholders. With improved initial assessments and immediate mandatory access to RFD's, the Scheme will see a reduction in reviews which further delay processes internally and impact businesses awaiting outcomes.

Recommendation: Introduce mandatory reason for decision disclosure obligations, and increase resources for initial investigations to reduce disputes and reviews.

Access to Workers' Medical History

16. Due to the 2015 changes, employers are no longer able to access the medical claim history of prospective and current employees, restricting their abilities to mitigate from aggravating and exacerbating workers injuries. This has created an inequitable system where employers are responsible for injuries that occur as a process of the work regardless of previous medical history and yet are unable to be privy to all relevant information that would see them alleviate potential risks to employees.
17. The previous system was of significant benefit to employers as they allowed small businesses to manage risks when employing prospective staff. Additionally, it ensured appropriate safeguards were in place to prevent incidents in the workplace, to the benefit of both employees and business.

18. Proponents who argued that access to previous medical claim history created opportunities of abuse by employers were arguing a vote of no confidence in federal anti-discrimination laws. Businesses remain subject to a number of stringent requirements that provide adequate protections for a workers' ability to find work, including but not limited to the *Anti-Discrimination Act 1991*.
19. CCIQ believes a fair and equitable position exists in the reinstatement of access to medical claim records to assist with protecting employees from future medical harm.

Recommendation: Reinstate access to medical records, regulated by the Workers' Compensation Regulator.

Conclusion

20. It is critical that Queensland retains the lowest workers compensation premiums in Australia, thereby promoting the State as a competitive and prosperous business operating environment. Queensland's workers' compensation premiums are a central element in our State's efforts to keep Queensland the best place to do business in the nation.

Recommendation:

- Review costs, and return to work statistics since the removal of the threshold, and recommend reinstatement of the threshold.
- Review internal processes, claims assignment and management to create expediency, and reduce red tape.
- Introduce mandatory reason for decision disclosure obligations, and increase resources for initial investigations to reduce disputes and reviews.
- Reinstate access to medical records, regulated by the Workers' Compensation Regulator.

21. CCIQ thanks you for consideration and this opportunity. If there are any further questions regarding this submission please contact General Manager of Advocacy, Kate Whittle on kwhittle@cciq.com.au.