



CHAMBER OF
COMMERCE &
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QUEENSLAND

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Submission to the Department of Justice and
Attorney-General
**Queensland's Workers' Compensation
Scheme**

12 November 2010

CONTENTS

	Page
1.0 Overview.....	3
2.0 Term of Reference 1.....	3
➤ Overarching cross-agency strategy	
➤ Better understanding of the system	
➤ More transparent funding arrangements	
3.0 Term of Reference 2.....	4
➤ Stakeholder forums	
➤ Minimum advisory standards and Codes of Practice	
➤ Advice from Q-COMP to the Minister	
➤ Information notices	
➤ Actuarial qualifications	
➤ Periodic reviews	
➤ Best practice by public sector department and agencies	
➤ Measuring and reporting on progress	
4.0 Term of Reference 3.....	7
➤ WorkCover’s engagement with employers during the claim process	
➤ Availability of medical expertise for claims managers	
➤ Regional considerations	
➤ Investigation of claims	
➤ Rescinding decisions to reject claims	
➤ Use of external legal practitioners	
➤ Poor performing employers	
➤ Reasons behind increasing common law claims	
5.0 Term of Reference 4.....	9
➤ Legal costs	
➤ Advertising of legal services	
➤ Information for claimants about legal costs	
6.0 Term of Reference 5.....	11
➤ Workers’ Compensation and Rehabilitation Act 2003	
➤ Rehabilitation and Return to Work (RRTW) policies and programs	
➤ RRTW Coordinators and WHSOs	
➤ Health and Safety Representatives	
➤ Reinstatement of an injured worker	
7.0 Conclusion.....	13
➤ Table 7.1. Overview of CCIQ’s response to each recommendation	

1.0 OVERVIEW

- 1.1 The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to provide feedback to the Department of Justice and Attorney-General (DJAG) and the Attorney-General and Minister for Industrial Relations, the Hon. Cameron Dick MP, on the recommendations from the *Structural Review of Institutional and Working Arrangements in Queensland's Workers' Compensation Scheme*. The Chamber has provided detailed feedback on each of the review's recommendations throughout this submission.
- 1.2 CCIQ is strongly supportive of implementing the vast majority of recommendations included in Robin Stewart-Crompton's report. Although there are positive aspects to the current scheme, CCIQ believes there is room for improvement. It is essential that Government and industry successfully manage the trends that are threatening the viability of the scheme moving forward (such as escalating common law claims and costs). Making substantial improvements now will ensure the scheme not only remains viable moving forward, but could be seen as the best, most competitive and most financially stable workers' compensation scheme in the country. It is essential that this is not achieved at the expense of Queensland businesses through substantially increasing premiums, regulatory impacts and associated obligations.
- 1.3 CCIQ is keen to work with the State Government to significantly improve the institutional and working arrangements of Queensland's workers' compensation scheme.

2.0 TERM OF REFERENCE 1

- 2.1 The first term of reference aims to identify appropriate strategies and institutional arrangements to ensure the roles and functions of Q-COMP, WorkCover and DJAG are clear and well understood by stakeholders and the broader community.
- 2.2 Currently there is a lack of understanding within the Queensland business community on the different roles, responsibilities and functions of Q-COMP, WorkCover and the Department. CCIQ is strongly supportive of implementing a strategy that enhances the awareness and understanding of each agency's roles and responsibilities, and ensures that each agency performs their functions in a way that optimises the overall performance of the workers' compensation scheme.

2.3 *Overarching cross-agency strategy*

CCIQ is strongly supportive of implementing recommendations 1.1 through to 1.8 which relate to the development of an overarching cross-agency strategy to more effectively prevent work-related harm and respond to its consequences. Based on the recommendations, CCIQ is supportive of this strategy:

- Being managed by Workplace Health and Safety Queensland (WHSQ);
 - Having an overall goal of strengthening the interaction between the three agencies to better coordinate activities;
 - Including sharing of data/information across the agencies and coordinating activities (including the development and distribution of guidance material);
 - Taking into consideration the goals of the strategy during strategic or business planning activities;
 - Encouraging joint activities to assist in the achievement of the goal of the overarching strategy;
 - Being outcome based with activities and results reported periodically to the Minister;
 - Being developed for ministerial endorsement by 31 March 2011, with the final strategy approved by the CEOs of the relevant government agencies to commence 1 July 2011;
 - Seeking Government support, with Ministers in other portfolios in which there are safety regulators invited to commit to the strategy.
- 2.4 CCIQ believes that implementing an overarching cross-agency strategy based on the recommendations in the final report would be a positive step forward in enhancing the relationship between the three agencies and remove the tendency to operate as 'silos' that will subsequently deliver an improved workers' compensation scheme in Queensland.

2.5 The Australian National Audit Office (ANAO) has recently released a report looking at Effective Cross-Agency Agreements.¹ Although based on the experience of Federal Government agencies, CCIQ believes this report includes several best practice principles that should be embraced when implementing the recommendation of a cross-agency strategy. Some of the best practice principles in the ANAO report include:

- Clearly indicate the agreed roles, responsibilities and functions to be undertaken by each agency, accompanied by sufficient context to be understood without ambiguity;
- Define achievable performance measures or indicators, aligned to outcomes and deliverables, and specify timeframes and frequency of reporting;
- Incorporate a review of the agreement.

2.6 CCIQ would also like to put forward the following suggestions in relation to implementing a cross-agency strategy:

- A strong focus on more efficiently and effectively using the resources provided to each agency to ensure more resources can be delivered back into the workers' compensation scheme;
- A stronger connection / engagement with industry stakeholders to be incorporated into the strategy;
- An overarching steering committee established which includes senior representatives from each agency to act as the strategy's ambassadors, as well as representatives from industry to provide a different perspective from an industry/business point of view;
- Incorporates joint ventures between the three agencies, as well as activities with industry such as joint seminars on a wide variety of relevant topics similar to the initiative of CCIQ hosting state-wide rehabilitation seminars in 2010 with Q-COMP and WorkCover. CCIQ also supports extending these types of activities to include other Government Departments such as the Department of Health;
- Regular updates provided to industry stakeholders on progress in implementing the strategy and the associated activities undertaken. This could be done in the form of an electronic newsletter.

2.7 Better understanding of the system

CCIQ is strongly supportive of implementing recommendation 1.9 to develop easy to understand guidance about the respective roles, powers and functions of the relevant agencies and how they interact. This information should be developed and published on appropriate websites as soon as possible. CCIQ believes information should also be provided on the activities of the separate agencies, links between these activities and how they are contributing toward a common goal. This could be in the form of an electronic newsletter as suggested above, or included in an annual report on Queensland's workers' compensation scheme.

2.8 More transparent funding arrangements

Queensland businesses seek more transparency around funding arrangements for the key agencies. Employers are keen to see where the money they contribute from their premiums ends up and what it is used for. If premiums continue to rise, transparency and accountability become even more important as employers' seek value for money.

2.9 CCIQ is supportive of implementing recommendation 1.10 (to have more direct lines of funding from WorkCover to WHSQ) as a positive step towards providing more transparency in the funding process.

3.0 TERM OF REFERENCE 2

3.1 The second term of reference looks at arrangements that can be put in place to enhance transparency and ensure that information is readily available to stakeholders and the broader community on the workers' compensation scheme performance. The issues under TOR 2 are closely linked to those under TOR 1 and therefore CCIQ reiterates support for implementing the recommendations under TOR 1 to also deliver improvements under TOR 2.

¹ Australian National Audit Office (2010), *The Auditor-General Audit Report No. 41 2009-10 Performance Audit: Effective Cross-Agency Agreements*, Canberra

3.2 Stakeholder forums

CCIQ is strongly supportive of implementing recommendations 2.1 and 2.2 to provide twice-yearly presentations to all stakeholders on the financial status of the fund and performance in all areas that are critical for the scheme's ongoing viability and the achievement of its objectives. This data should be made publicly available to all interested persons.

3.3 The Chamber has previously applauded the State Government for its open and transparent engagement process throughout the WorkCover review, such as the Stakeholder Reference Group. We are supportive of embracing the success of this process and capitalising on it moving forward. Subsequently, CCIQ is supportive of bringing together the relevant government agencies, industry organisations and other stakeholders to discuss and analyse the following:

- The financial performance of Queensland's workers' compensation scheme, including areas where costs are substantially increasing;
- Trends in all claim types and the associated factors that might be contributing to these trends;
- Strategies to ensure Queensland's premiums remain the lowest in Australia;
- Rehabilitation and return to work procedures including what is and what is not improving outcomes;
- How to promote prevention to reduce the overall number of claims, including enhancing the awareness and understanding of employees on the workers' compensation scheme and the impact of increasing claim numbers on the scheme and negative implications of premium rises on employment, profitability and investment;
- Potential areas for reform to feed into the Minister's review at the end of 2012 on the overall effectiveness of the most recent changes to the scheme.

3.4 If a Stakeholder Reference Group is formed in future, the group should be limited to industry associations and unions, not their members. During the most recent process, CCIQ was concerned about the level of representation from some industry sectors (particularly the legal industry) compared to others. The employer perspective in this circumstance tended to be crowded out by the significant number of legal representatives that were around the table. It is essential that the views of all key stakeholders are clearly heard and considered during these processes.

3.5 Minimum advisory standards and Codes of Practice

CCIQ is supportive of implementing recommendations 2.3 to 2.8 that relate to developing minimum advisory standards and codes of practice for insurers (ie WorkCover and self insurers) including:

- Q-COMP being empowered under the *Workers' Compensation and Rehabilitation Act (WCRA)* to develop (subject to the regulatory assessment statement process) minimum advisory standards in respect of prescribed matters for the workers' compensation scheme;
- An insurer providing notice in writing explaining any non-compliance with these standards;
- Information on any non-compliance by insurers to be included in Q-COMP's periodic reports to the Minister and in its annual report;
- Any instances of non-compliance to be taken into account by Q-COMP when considering an application for renewal of a self-insurance licence;
- Considerations around the development of codes of practice in relation to insurer's claims management and other prescribed matters under the WCRA.

3.6 CCIQ has previously raised concerns around the lack of focus placed on codes of practice, industry standards and best practice guidelines. The development of these types of documents should be undertaken with some level of consultation with industry, particularly on matter that impact on business such as the way in which claims are managed and improving rehabilitation and return to work outcomes.

3.7 The WCRA says that the Minister may make a code of practice that states the ways in which an insurer may perform its functions,² exercise its powers or meet its obligations under the Act in relation to the management of its claims². CCIQ is also supportive of developing codes of practice, industry standards

² Section 486A of the Workers' Compensation and Rehabilitation Act 2003 under Chapter 9 The Minister, Part 3 The Minister and codes of practice.

and best practice guidelines beyond the functions, powers and obligations of insurers to matters that impact on insurance policy holders. These are required in areas where obligations and requirements are stated in general terms (i.e. risk management) or not outlined in detail (i.e. rehabilitation and return to work). CCIQ has received feedback from employers and WHSOs that they lack awareness and knowledge about health and safety hazards at work, rehabilitation and the management of employees with health conditions in the workplace and that more information is needed on the actions they should take to manage these.

3.8 Advice from Q-COMP to the Minister

CCIQ provides in-principle support for implementing recommendations 2.9 and 2.10 that relate to empowering the Minister to request in writing formal advice from Q-COMP about any matter relating to the overall operation of the workers' compensation scheme.

3.9 Information notices

Recommendation 2.11 is for the WCRA to be amended to require the maker of a decision that is reviewable or open to appeal to provide the person who is affected by that decision with a written information notice about that person's right to apply for a review. CCIQ is supportive of implementing this recommendation as it is important that a person/employer is aware of their rights to appeal following a decision that impacts on them or their business if they believe there is a case to do so.

3.10 Actuarial qualifications

CCIQ has no concerns surrounding the implementation of recommendation 2.12 to empower Q-COMP to determine the minimum qualifications for an actuary for the purposes of the Act.

3.11 Periodic reviews

CCIQ is supportive of implementing recommendation 2.13 to amend the WCRA to ensure a review of the operation of the workers' compensation scheme is undertaken at least once every five years after 2012. Queensland businesses are supportive of the State Government being proactive in reviewing the workers' compensation scheme to ensure the scheme remains viable moving forward and that a situation similar to the one that arose at the end of 2009 does not once again eventuate with changes and premium increases needing to be made at the last minute. Ongoing review and evaluation will allow Queensland businesses to determine what is and what is not working, and allow the State Government to make improvements to deliver the best and most competitive workers' compensation scheme in the country.

3.12 CCIQ would like to recommend that proactive reviews should occur on a more regular basis than once every 5 years. Embracing a culture of continuous improvement will be beneficial moving forward and will ensure that ongoing improvements to the scheme's operation will continue to be implemented.

3.13 Best practice by public sector departments and agencies

Recommendation 2.14 relates to all government departments, agencies and other bodies seeking to meet best practice standards of prevention in relation to work-related harm in the use and application of the workers' compensation scheme. CCIQ is strongly supportive of implementing this recommendation as government must lead by example. Following their experience, Government agencies would also be able to develop case studies or other guidance materials that could be used by industry to encourage further adoption of best practice standards both throughout the public and private sector.

3.14 CCIQ agrees with the analysis in the report that government's non-compliance may undermine its authority in promoting the highest standards of workplace health and safety and in dealing with work-related harm through the workers' compensation scheme. Government needs to ensure that the shortcomings in some departments and agencies in meeting basic obligations are addressed as a matter of urgency.

3.15 *Measuring and reporting on progress*

CCIQ supports recommendation 2.15 to report on the implementation of those recommendations from this report that are agreed upon by Government in quarterly reports and included in the agencies' annual reports. Industry is keen to remain informed of changes to the current scheme and progress on activities to improve the scheme's viability moving forward.

4.0 TERM OF REFERENCE 3

- 4.1 The third term of reference aims to identify strategies to improve the efficiency and effectiveness of the workers' compensation claims management and common law settlement processes.
- 4.2 Employers often raise concerns around the management of workers' compensation claims and common law cases. CCIQ is supportive of implementing strategies that aim to reduce or eliminate the concerns of employers such as those raised below:
- Concerns over the perceived level of fraudulent and exaggerated claims that are accepted by WorkCover and pushed through the system;
 - WorkCover has a reputation of settling cases quickly, undertaking limited investigations and dismissing few cases;
 - There is a lack of communication and advice from WorkCover to the employer throughout the claim process;
 - There is a perception that common law claims are easy money, with easy access and little proof required to have a successful outcome;
 - Large payouts in some cases that do not appear justified, such as payouts for skin cancers that develop over many years.

4.3 *WorkCover's engagement with employers during the claim process*

CCIQ is supportive of implementing recommendation 3.1 to amend WorkCover's charter to ensure ongoing effective engagement with employers about claims management, including advising at specific times of a claim's progress and what action is being taken. This would help alleviate some of employers' concerns around the lack of communication and advice from WorkCover throughout the claim process.

- 4.4 The Chamber is supportive of implementing recommendation 3.2 to continue the WorkCover interactive seminars on common law claims management at least annually, and further extending these seminars to include statutory claims management and return to work and rehabilitation. However, it is important that these seminars also provide a means of addressing the concerns raised as deemed appropriate.
- 4.5 CCIQ is strongly supportive of implementing recommendation 3.3 which involves WorkCover working with stakeholders to prepare easy to understand guides for employers and injured workers about what to expect in the claims process. As previously advocated, CCIQ supports the development of guides for dealing with workers' compensation claims including information on the main steps in the process, examples of good practice and the roles and responsibilities of all impacted stakeholders including employers, managers, supervisors, employees, rehabilitation and return to work coordinators and those with responsibilities for workplace health and safety, such as Workplace Health and Safety Officers (WHSOs). CCIQ would welcome the opportunity to be involved in the development of these guides.

4.6 *Availability of medical expertise for claims managers*

Many businesses have expressed their concerns around consistency and accountability amongst health professionals regarding the initiation and management of WorkCover claims. Implementing recommendation 3.4 by appointing medical experts that WorkCover staff can have ready access to for advice on the medical aspects of claims may help to overcome these concerns raised by employers. CCIQ would support extending this recommendation to include the use of occupational health experts who have a better understanding of the full range of workplace and environmental hazards, the associated risks of exposure to such hazards, and how these may cause an adverse impact on biological health, such as injury or illness³.

³ For more information, visit the website of the Australasian Faculty of Occupational and Environmental Medicine at www.afom.racp.edu.au.

4.7 Regional considerations

Recommendation 3.5 relates to whether WorkCover should take any action to strengthen the knowledge and understanding of centralised claims managers of regional circumstances. CCIQ is supportive of WorkCover taking action in this regard as businesses have told us about the importance of WorkCover accommodating regional needs in their service delivery.

4.8 Investigation of claims

A key issues that is constantly raised by Queensland businesses is concern over the investigation of claims by WorkCover – in particular, settling cases quickly, undertaking limited investigation and dismissing few cases despite concerns over the perceived high levels of fraudulent and/or exaggerated claims. Recommendation 3.6 is for WorkCover, in consultation with stakeholders, to review its policies and practices about the investigation of claims to consider whether its capacity to investigate is being used appropriately. CCIQ is strongly supportive of reviewing WorkCover's policies and practices, however questions whether WorkCover should be undertaking this investigation jointly with WHSQ or Q-COMP (in consultation with industry stakeholders) to ensure a "hard look" is taken at all internal practices relating to the investigation of claims.

4.9 Rescinding decisions to reject claims

CCIQ has no concerns at this point in time around implementing recommendation 3.7 to amend the WCRA to permit WorkCover to rescind at its own initiative a decision to reject an application for compensation where WorkCover was satisfied that the decision was wrongly made or that material information had not been taken into account. It is essential that WorkCover is provided with a prescribed period in which it could alter its original determination and that WorkCover provides in writing to both the employer and the employee the reasons behind the change in decision.

4.10 Use of external legal practitioners

CCIQ is supportive of implementing recommendation 3.8 to ensure sufficient use is being made of legal panel members or other skilled practitioners to assist in the training and upskilling of WorkCover staff who are engaged in claims management.

4.11 Poor performing employers

CCIQ is supportive of placing greater attention on those businesses with a high number of workplace incidents. Targeting these organisations and implementing strategies to reduce their incidents will go a long way towards reducing claim numbers in Queensland and promoting the benefits of prevention activities. CCIQ is supportive of implementing recommendation 3.9 as a positive step towards reducing overall claim numbers. Allowing these employers to accept a voluntary undertaking to improve their performance, with a successful delivery of agreed improvements resulting in their premiums not being increased, will lead to positive outcomes for businesses, employees, government and the community.

4.12 Reasons behind increasing common law claims

CCIQ is strongly supportive of implementing recommendation 3.10 to obtain a greater understanding of why injured workers take common law actions for damages through the commissioning of a survey by an impartial third party.

4.13 In 2009-10, there were 4,262 new common law claims lodged, 18% more than in 2008-2009⁴. Gross common law payments for 2009-10 were \$554.8 million, up 40% from 2008-09, with the substantial increase in cost attributed to increasing claim numbers, number of claims finalised and the average claim cost⁵. 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)⁶. The most significant increase in common law claims over recent years has occurred in the lower levels of WPI. Common law

⁴ WorkCover Queensland (2010), *Annual Report 2009-10*, Queensland.

⁵ *ibid*

⁶ Department of Justice and Attorney-General (2010), *The Queensland Workers' Compensation Scheme: Ensuring Sustainability and Fairness discussion paper*, Brisbane

claims in the injury bands of 0-10% WPI accounted for 66% of common law claims and around \$233 million or 41.1% of all common law claim payments in 2008-09⁷.

4.14 Taking into account these statistics, it is of no surprise that a key concern of employers is the increasing number of common law claims and their associated impact on the viability of the workers' compensation scheme moving forward.

4.15 Employers believe there are a number of factors contributing to an increasing number of common law claims including:

- The high level of damages awarded to claimants;
- The growing culture in Australia of "suing" people;
- Increased solicitor involvement, including "no win no fee" advertising and aggressive action by lawyers that encourage workers to make a claim even for minor injuries;
- The perception that common law claims are "easy money", with easy access and little proof required in order to succeed;
- WorkCover's reputation of settling quickly out of court, undertaking limited investigations and dismissing few cases;
- Poor employment prospects and financial hardships, especially during the GFC;
- The experience of others and word of mouth is encouraging more claims;
- Increased awareness of the option to claim;
- The perception that it is easy to fake or exaggerate injuries, which will not be investigated or identified by WorkCover;
- Claims being accepted for injuries that occur outside of the workplace;
- The aging population and general deterioration in population health (ie increasing obesity);
- Increased health costs encouraging more people to seek compensation to help cover costs;
- Employees are unaware of the cost of WorkCover premiums and the associated impact on salary levels.⁸

4.16 CCIQ supports the implementation of recommendation 3.10 to ensure a greater understanding of why the number of common law claims continues to increase. However, we strongly believe that analysis needs to go beyond a survey. A comprehensive analysis is required to further understand the trends in Queensland, with these trends compared to other jurisdictions. A range of recommendations are required to curb the trend moving forward and enhance the ongoing viability of the scheme.

4.17 CCIQ remains supportive of introducing a 15% WPI threshold for accessing common law to substantially decrease claims and costs. Queensland employers believe that the statutory process is an appropriate method of achieving compensation for genuine work-related injuries within the range of 0 to 15% WPI. Currently, the common law process represents an expensive means of awarding compensation to employees compared to the statutory process, particularly for minor injuries in the lower levels of WPI. It is not a case of denying access to compensation for employees who are genuinely injured in the workplace, rather it is about achieving the most efficient means of delivering outcomes for all stakeholders.

5.0 TERM OF REFERENCE 4

5.1 The fourth term of reference looks at the appropriateness of the current level of legal costs and management of the legal profession in workers' compensation matters.

5.2 CCIQ has previously expressed the concerns of employers regarding the links between increased solicitor involvement and the increase in common law claims, as well as concerns around the level of advertising and the level of fees that can be charged.

⁷ Department of Justice and Attorney-General (2010), *The Queensland Workers' Compensation Scheme: Ensuring Sustainability and Fairness discussion paper*, Brisbane

⁸ CCIQ Workers' Compensation survey undertaken in January 2010 by 850 businesses

5.3 Legal costs

CCIQ is supportive of enhancing the transparency of legal costs, and as a result, supports the implementation of recommendations 4.1 and 4.2. The Chamber supports an independent annual survey to determine how much of settlements go to the claimant, claimant's lawyers, medical services and so on. A survey conducted and published every year would provide baseline data from which annual comparisons can be made to determine trends.

- 5.4 CCIQ also supports the implementation of recommendation 4.3 that would require legal practitioners from 2012 to disclose information on settlement distributions to Q-COMP. Recommendation 4.4 is also supported to ensure regular conferences are convened by WHSQ with the Law Society, the ALA, WorkCover, Q-COMP and other interest parties to discuss options for managing legal costs.
- 5.5 CCIQ is strongly supportive of significantly enhancing the focus on legal practitioners to ensure that rising common law costs driven by this industry are also placed under the magnifying glass. For WorkCover alone, the common law legal costs associated with defendants and plaintiffs in 2009-10 was \$35.8 million, which represents a 10.5% increase from 2008-09⁹. Escalating legal costs only place more pressure on the viability of Queensland's workers' compensation scheme and must be effectively managed moving forward.

5.6 Advertising of legal services

CCIQ is strongly supportive of implementing recommendation 4.5 for WHSQ to undertake further work to identify how the advertising of legal services is affecting claims for workers' compensation and whether further action is required to control such activity.

- 5.7 Employers often raise concerns around advertising by the legal profession including the "no-win, no fee" advertising strategy. It is important that concerns around the advertising of legal services is effectively managed before it gets out of hand.
- 5.8 A scathing report on this issue was released by the UK Government in October 2010¹⁰. The Foreword by the UK Prime Minister, David Cameron, paints a serious picture that CCIQ does not want to see eventuate in Queensland:

"A damaging compensation culture has arisen, as if people can absolve themselves from any personal responsibility for their actions, with the spectre of lawyers only too willing to pounce with a claim for damages on the slightest pretext. We simply cannot go on like this... We're going to curtail the promotional activities of claims management companies and the compensation culture they perpetuate. We're going to end the unnecessary bureaucracy that drains creativity and innovation from businesses"¹¹.

- 5.9 The UK report and its range of concerns and recommendations should be seriously considered by the Queensland Government when implementing recommendation 4.5 and when considering whether further action is required.

5.10 Information for claimants about legal costs

CCIQ is supportive of enhancing the information provided by legal professionals to clients about potential legal costs. As a result, we are supportive of implementing recommendations 4.6 and 4.7 for legal practitioners to be required to provide a copy of a checklist (to be prepared by Q-COMP) to clients at the point of engagement and at the final disposition of a matter that includes relevant information relating to legal and other costs.

⁹ WorkCover Queensland (2010), *Annual Report 2009-10*, Queensland.

¹⁰ UK Government (2010), *Common Sense Common Safety: A report by Lord Young of Graffham to the Prime Minister following a Whitehall-wide review of the operation of health and safety laws and the growth of the compensation culture*, UK

¹¹ UK Government report *Common Sense Common Safety* – foreword by the Prime Minister p.5

6.0 TERM OF REFERENCE 5

- 6.1 Term of reference 5 looks at what actions can be taken by scheme stakeholders to improve rehabilitation and return to work outcomes.
- 6.2 CCIQ is supportive of increasing the focus on and the funds directed towards rehabilitation and return to work initiatives, therefore reducing workplace health and safety incidents and the subsequent number of claims that are made and thus rehabilitation activities that need to occur. It is essential that greater emphasis is placed on prevention as a means of managing risks at work and reducing the number of workers' compensation claims. More strategies need to be adopted to deliver outcomes in this area. A key strategy to deliver improved outcomes in this area is to strengthen the links between the *Workplace Health and Safety Act 1995* and the *Workers Compensation and Rehabilitation Act 2003*.

6.3 *Workers' Compensation and Rehabilitation Act 2003 (WCRA)*

CCIQ is supportive of implementing recommendation 5.1 to make return to work and rehabilitation a primary object of the WCRA. Currently, the Act places large emphasis on workers' compensation and the administration of the Act, with limited direction in relation to employers' and other stakeholders' obligations and best practice around rehabilitation and return to work for injured workers or the management of that worker once they return to the workplace. Implementing recommendation 5.1 will ensure that greater attention is placed on rehabilitation and return to work initiatives.

- 6.4 CCIQ provides in-principal support for recommendation 5.2 for stronger enforcement of:
- The period within which a notice of claim is given under s.133 of the WCRA;
 - An employer's obligations as to an injured worker's return to work and rehabilitation;
 - A worker's obligations as to return to work and rehabilitation.
- 6.5 Before stronger enforcement commenced it would be essential to undertake further information and awareness programs and activities to ensure employers' and employees' are aware of their obligations under the WCRA. For example, the period in which a notice of claim needs to be given should be included on the actual form to provide upfront awareness of this obligation.
- 6.6 Following the implementation of further information and awareness campaigns, CCIQ is supportive of stronger enforcement of employers' current obligations under the WCRA which are:
- Notify WorkCover immediately about a workplace injury;
 - Pay the injured workers' wages for the day of the injury;
 - Pay the employer excess if the claim is accepted;
 - Notify WorkCover about any suitable duties or reduced hours program organised for the worker;
 - Take every reasonable step to help with a worker's rehabilitation while they are receiving compensation benefits.¹²
- 6.7 Queensland employers are strongly supportive of greater enforcement of workers' obligations under the WCRA including:
- Providing true and non misleading information to WorkCover;
 - Participating in rehabilitation programs, except where there is a reasonable excuse for not doing so;
 - Telling WorkCover if they are returning to work of any kind.¹³
- 6.8 Employers believe that WorkCover needs to more strongly enforce their right to cease benefits for those workers who refuse to participate in rehabilitation or follow the directions of the rehabilitation coordinator.

¹² WorkCover Queensland (2010). *Employer rights and responsibilities*. Link - www.workcoverqld.com.au. Accessed 01/11/10

¹³ WorkCover Queensland (2010). *Worker rights and responsibilities*. Link - www.workcoverqld.com.au. Accessed 01/11/10.

- 6.9 CCIQ provides in-principle support for implementing recommendation 5.3 to provide additional enforcement powers under the WCRA in relation to return to work and rehabilitation obligations, including, where compliance cannot be achieved otherwise, powers to give enforceable directions to employers. This action is the preferred option in comparison to penalties and other sanctions. Assisting an injured worker to return to the workplace will deliver the most beneficial outcomes for both the employer and employee, as well as the local community. However, the enforceable directions must be reasonable in the circumstance and be consistent with employers' obligations under the WCRA.

6.10 Rehabilitation and Return to Work (RRTW) policies and programs

CCIQ is supportive of implementing recommendation 5.4 for WorkCover and Q-COMP to develop RRTW policies and programs in consultation with each other to ensure they are complementary and facilitate a better understanding of the potential demand for RRTW services when claimants cease to be within the scope of WorkCover's programs.

- 6.11 CCIQ also supports the development of guidelines and checklists aimed at organisations and employers to encourage best practice in rehabilitation and return to work activities, as well as managing those injured workers who have returned to work but will not fully recover or return to their pre-injury condition. Further consideration is also required on developing return to work plans for injured employees and the workplace health and safety aspects of this as well as how to manage those employees in high risk categories (young, aging, pregnant and those with pre-existing or underlying conditions).
- 6.12 To help achieve this endeavour, CCIQ is supportive of implementing recommendation 5.5 for Q-COMP (in consultation with WorkCover and self-insurers) to review and revise its best practice guidance for any person with RRTW obligations or needs under the workers' compensation scheme.

6.13 RRTW Coordinators and WHSOs

CCIQ is supportive of implementing recommendation 5.6 that relates to Q-COMP annually examining the effectiveness of RRTW Coordinators and determining whether further training and support by Q-COMP should be provided to assist them in their role. This should be done in consultation with industry stakeholders including CCIQ.

- 6.14 CCIQ is also supportive of implementing recommendation 5.7 for WHSQ, Q-COMP and WorkCover to develop mechanisms to encourage the more effective use of WHSOs and RRTW coordinators up to and after the introduction of the model *Work Health and Safety Act* in 2012. These roles are seen as particularly important in the workplace.
- 6.15 There are strong arguments for maintaining the role of WHSOs in the workplace following the implementation of the model OHS Act which does not include provisions for this role in the workplace. A recent CCIQ survey found that:
- 74.1% of employers would maintain the WHSO role in their business even if it was not mandatory;
 - The WHSO role was rated highly effective in all their main responsibilities under the Act including advising businesses on WHS issues, identifying hazards and risks, reducing incidents, establishing educative programs and assisting businesses in understanding their obligations under the Act;
 - The primary advantage of having a WHSO in the workplace includes providing the organisation with internal expertise on WHS issues and ensuring that both management and staff had access to expert advice and information when required;
 - Ensuring a focus on safety, providing safer and more productive workplaces and increasing the awareness of WHS issues and obligations were also seen as key advantages of having a WHSO in the workplace;
 - WHSOs were seen to save the employer money through reduced lost time injury frequency rates and reduced workers' compensation costs and premiums¹⁴.
- 6.16 CCIQ is keen to work with the State Government to ensure the WHSO role (or the associated standards for competency in WHS) is maintained at least within the Queensland business environment following the

¹⁴ CCIQ Survey on the Model OHS Act undertaken in October 2009 with 700 businesses taking part

implementation of the national OHS framework. CCIQ believes that the preservation of WHSOs within workplaces can only lead to positive outcomes for government, businesses, employees, the community and the economy.

6.17 Health and Safety Representatives

Recommendation 5.8 is for consideration to be given to authorising a suitably trained health and safety representative to be entitled to perform functions that facilitate the return to work and rehabilitation of an injured worker to a workplace (as part of the implementation of the model *Work Health and Safety Act*). In order for this recommendation to be implemented, it would be essential for appropriate training to be provided to health and safety representatives to reflect the increased responsibility of their positions, which is likely to effectively encroach on the role of the WHSO. CCIQ believes a better outcome would be for WHSOs and RRTW Coordinators to work more closely together to deliver improved return to work and rehabilitation outcomes for an injured worker in their workplace.

6.18 Reinstatement of an injured worker

CCIQ has some concerns around the implementation of recommendation 5.9. This recommendation relates to the strengthening of provisions under the WCRA relating to the reinstatement of an injured worker by allowing the Industrial Relations Commission:

- Where reinstatement to the worker's original position is impractical, to order the worker's employment in another position that the employer has available that the IRC considers suitable;
- To make any other order that appears necessary to the Commission for ensuring that the reinstatement is fair and effective, including an interim order.

6.19 Currently under the WCRA, the worker may apply to the employer, within 12 months after the injury, for reinstatement to the worker's former position¹⁵. Employers have some serious concerns with expanding the WCRA beyond the current provision. Several things would need to be taken into consideration including:

- The capacity of the employee to work following the injury;
- The capacity of the employee to effectively undertake another position in the organisation;
- The cost involved for the employer in up-skilling the employee to undertake another role.

6.20 In relation to the reinstatement of an injured worker, CCIQ believes that further consideration is required around preventing the re-aggravation of the injury or ill health in the future. The short-tail nature of the Queensland scheme involves returning injured workers to their pre injury state, however this can predispose them to further injury. Additionally, workers may return to the workplace following an injury or ill health whilst recovering and may not be at the level of fitness required for entry to the workplace or for the work activities expected of them. CCIQ is supportive of linking the *Workplace Health and Safety Act 1995* and the *Workers' Compensation and Rehabilitation Act 2003* (i.e. similar to the WHSA and Electrical Safety Act with one Act calling up the other) to create a regulatory cycle that enhances the links between injury prevention and risk management activities, early notification of ill health or injury and rehabilitation and return to work outcomes.

7.0 CONCLUSION

7.1 CCIQ is supportive of implementing the majority of recommendations included in the *Structural Review of Institutional and Working Arrangements in Queensland's Workers' Compensation Scheme*. CCIQ believes the implementation of the majority of recommendations from the final report will prove a positive step forward in ensuring Queensland has the most competitive workers' compensation scheme in the country, while working towards a system that operates efficiently and effectively to provide the best support to employers and employees who are unfortunately impacted upon by a WHS incident.

7.2 The table below provides an overview of the Chamber's support for each recommendation, the corresponding section within this submission and associated comments as required.

¹⁵ Chapter 4 Injury Management, Part 6 Protection for Injured Workers, 232D – *Workers Compensation and Rehabilitation Act 2003*

Table 7.1 Overview of CCIQ's response to each recommendation

Recommendation	CCIQ Support for Recommendation	Comment / Section
1.1	√	Section 2.3 to 2.5. Section 2.6 includes additional suggestions to be considered when implementing the strategy.
1.2	√	Section 2.3 to 2.6.
1.3	√	Section 2.3 to 2.6.
1.4	√	Section 2.3 to 2.6.
1.5	√	Section 2.3 to 2.6.
1.6	√	Section 2.3 to 2.6.
1.7	√	Section 2.3 to 2.6.
1.8	√	Section 2.3 to 2.6.
1.9	√	Section 2.7.
1.10	√	Section 2.8 & 2.9. Greater transparency around all funding arrangements is desired.
2.1	√	Section 3.2 to 3.4. A list of topics that CCIQ would like to see discussed in these forums is included in section 3.3.
2.2	√	Section 3.2
2.3	√	Section 3.5 to 3.7.
2.4	√	Section 3.5 to 3.7.
2.5	√	Section 3.5 to 3.7.
2.6	√	Section 3.5 to 3.7.
2.7	√	Section 3.5 to 3.7.
2.8	√	Section 3.5 to 3.7. Codes of practice / best practice guidelines are also required in areas where obligations and requirements are stated in general terms or are not outlined in detail.
2.9	√	Section 3.8
2.10	√	Section 3.8
2.11	√	Section 3.9
2.12	Neutral	Section 3.10
2.13	√	Section 3.11 & 3.12. Periodic reviews should occur more regularly than once every 5 years.
2.14	√	Section 3.13 & 3.14. Non-compliance by government can undermine its authority in WHS & workers' compensation issues.
2.15	√	Section 3.15.
3.1	√	Section 4.3.
3.2	√	Section 4.4. These seminars also need to provide a means of addressing the concerns raised.
3.3	√	Section 4.5. CCIQ would welcome the opportunity to be involved in the development of these guides.
3.4	√	Section 4.6. Medical experts should also include occupational health experts.
3.5	√	Section 4.7.
3.6	√	Section 4.8. The review should be undertaken jointly with other agencies and with stakeholder consultation to ensure a detailed investigation of WorkCover's practices.
3.7	Neutral	Section 4.9. A prescribed time period is required with the reason behind the change in decision provided in writing to both parties.
3.8	√	Section 4.10.
3.9	√	Section 4.11.
3.10	√	Section 4.12 to 4.17. Should be extended to include a comprehensive analysis of the trends in Queensland and other jurisdictions as well as include a range of recommendations.

4.1	√	Section 5.3
4.2	√	Section 5.3.
4.3	√	Section 5.4 & 5.5. More focus is required on legal practitioners in the aim to reduce escalating common law claims and costs.
4.4	√	Section 5.4 & 5.5.
4.5	√	Section 5.6 to 5.9. This is an area of huge concern to employers, particularly 'no win, no fee' advertising.
4.6	√	Section 5.10.
4.7	√	Section 5.10.
5.1	√	Section 6.3.
5.2	√	Section 6.4 to 6.8. Further information and awareness campaigns are required in the first instance. Stronger enforcement of employees' obligations are strongly supported.
5.3	√	Section 6.9. Must be reasonable in the circumstance and be consistent with employers' obligations under the Act.
5.4	√	Section 6.10.
5.5	√	Section 6.11 & 6.12.
5.6	√	Section 6.13. Should be done in consultation with industry.
5.7	√	Section 6.14 to 6.16. CCIQ is keen to maintain the WHSO role in Queensland following the implementation of the model OHS framework.
5.8	√	Section 6.17. A better outcome would be for WHSOs and RRTW Coordinators to work more closely together to deliver improved outcomes for injured workers.
5.9	X	Section 6.18 to 6.20. This recommendation requires further consideration following serious concerns by employers.

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