



# *A status review*

1997–2011



# Contents

<b>About WorkCover Queensland</b>	<b>1</b>
<b>Background</b>	<b>2</b>
<b>Key achievements</b>	<b>4</b>
<b>Key review and legislative milestones</b>	<b>6</b>
<b>Finances</b>	<b>11</b>
<b>Table 1—Key financial statistics</b>	<b>12</b>
<b>Table 2—Historical financials</b>	<b>13</b>
<b>Corporate governance</b>	<b>14</b>
<b>Employers and premium</b>	<b>17</b>
<b>Workers, claims, and rehabilitation</b>	<b>20</b>
<b>Customer research</b>	<b>23</b>
<b>Appendix</b>	
<b>Appendix 1—Kennedy Report recommendations</b>	<b>24</b>
<b>Appendix 2—Excerpt from the Kennedy Review of EBR</b>	<b>32</b>
<b>Appendix 3—National Competition Policy Review 2000</b>	<b>34</b>
<b>Appendix 4—Legislative amendments</b>	<b>35</b>
<b>Appendix 5—Productivity report</b>	<b>40</b>
<b>Appendix 6—Robin Stewart-Crompton Review</b>	<b>44</b>
<b>Appendix 7—Financials</b>	<b>48</b>

## About WorkCover Queensland

Workers' compensation insurance has been part of Queensland business since 1916. WorkCover Queensland (WorkCover) was formed in February 1997 and for over 14 years, has been the main provider of workers' compensation insurance to Queensland employers.

Although WorkCover is a government owned statutory body, it operates as an independent, non-profit, commercial enterprise and is self funding. Income is derived from premiums paid by employers and returns on invested funds.

A WorkCover accident insurance policy insures employers against the cost of statutory claims and possible common law claims. The policy ensures that an employee who is injured at work receives financial support and rehabilitation following an injury.

In the year ending 30 June 2011, WorkCover insured more than 150 000 employers and managed in excess of 92 000 statutory claims and 3 800 common law claims in accordance with the *Workers' Compensation and Rehabilitation Act 2003*. WorkCover's in-house case management model allows workers to receive specialised service and attention. Over 85% of statutory claims are decided within ten days. Common law claims now have an average duration of 49 weeks—outcomes previously would take an average of three years.

Queensland employers pay one of the lowest average workers' compensation rates in Australia. From 2008 to 2010, WorkCover offered employers the lowest average premium rate in any Australian state at just \$1.15 per \$100 wages. This was down from \$2.145 in 1998. In 2010, due to the global financial crisis (GFC) and increasing common law claim numbers and costs, the average premium rate was increased to \$1.30 per \$100 wages to maintain the fund's viability. The rate increased again in 2010-2011 with the average premium rate set at \$1.42 per \$100 wages, but this is still one of the lowest average rates in Australia.

The WorkCover Board of Directors sets the organisation's strategic direction. The Board is made up of a chairman and six directors and is responsible for approximately \$2.5 billion in funds (as of 30 June 2011). In 2010-11, WorkCover generated more than \$1.1 billion in premium revenue.

Since February 1997, WorkCover has maintained a presence throughout Queensland. In 2011, WorkCover employed over 800 people, with relatively low staff attrition.

Since inception, WorkCover has demonstrated that it is a customer focussed insurer, balancing the needs of both workers and employers. WorkCover's guiding philosophy is simple—to provide the best possible benefits and rehabilitation programs for workers, at the lowest possible premium for employers. The vision and goals have provided a constant focus for all at WorkCover allowing the business to evolve and continue to provide customers with superior outcomes. WorkCover encourages employers to focus on injury prevention and, in the event of an injury, a stay at or return to work outcome for workers. To achieve the best possible results for customers, WorkCover constantly reviews and refines processes and service delivery methods.

For WorkCover to keep being successful in delivering these services to its customers, it is important to build and maintain beneficial working relationships with stakeholders such as: Q-COMP, Workplace Health and Safety Queensland, the Department of Justice and Attorney-General, medical and allied health providers, lawyers, unions, and industry associations. A commitment to corporate governance and critical self assessment ensures WorkCover will continue to operate at best practice.

## Background

In the mid 1990s, the Queensland workers' compensation scheme was under performing. The environment was overly bureaucratic with drawn out claims decision making timeframes, complex procedures, the highest premium rate in Australia and the fund was \$320 million in deficit in 1996.

The scheme was receiving complaints from all sectors of the workers' compensation community—workers, employers, lawyers, the medical profession, and others. So, the State Government established an inquiry, headed by Queensland businessman Mr Jim Kennedy AO.

The Kennedy Report, tabled in Parliament in July 1996, made 79 recommendations and was the driver for major reform of the Queensland workers' compensation scheme (refer Appendix 1). The recommendations formed an integrated package designed to return the workers' compensation scheme to full funding. Further legislative and review processes also played a key role in developing today's Queensland workers' compensation scheme.

An implementation taskforce translated 73 accepted recommendations of the report into the *WorkCover Queensland Act 1996*. A further two recommendations were implemented at a later date. The majority of provisions commenced on 1 February 1997 and the remaining provisions commenced on 1 July 1997. Major elements included:

- establishment of a commercially oriented WorkCover Queensland Board
- introduction of self-insurance and self-rating
- establishment of the experience based rating (EBR) system of premium calculation
- changes to definition of worker (excluded non pay-as-you-earn (PAYE) employees, working directors, and trustees) and injury (employment to be 'the major contributing factor'), journey claims, and industrial deafness, and
- pre-proceedings process for common law claims.

A prime goal of the recommendations was to create a fund that would compare favourably to other states.

Shortly after inception, WorkCover's inaugural Chairman, Mr Frank Haly, appointed a new Chief Executive Officer (CEO), Mr Tony Hawkins. Mr Ian Brusasco AM succeeded Mr Haly in 1998, and pledged to return the fund to solvency by stating: *We will provide the best possible benefits to injured workers at the cheapest possible premiums for employers. Our aim is to get that balance right.*

The Kennedy Report recognised the need to continually improve the system. His report recommended a further review in 2000 to consider the National Competition Policy (NCP) requirements and the fund's return to solvency.

A review of the EBR system was conducted in March 2000 (refer Appendix 2), followed soon after by the National Competition Policy Review (refer Appendix 3) and further legislative changes (refer Appendix 4). An internal and external assessment of WorkCover's operations formed part of the Productivity Commission's 2003–2004 investigation and report into the possibility of a national workers' compensation system (refer Appendix 5).

In the spirit of this ongoing review and reform process, WorkCover's Board asked its management team to undertake a status review to be published under the title *The successful balance* in conjunction with the 2003–2004 Annual Report. The aim of this review was to assess the milestone events, achievements, and strategies leading to WorkCover's success to date, particularly with reference to the Kennedy Report recommendations.

In February 2007, a second Kennedy review was commissioned by the State Government in relation to three aspects of the Queensland workers' compensation scheme: the premium rate for employers, the extra benefits WorkCover can offer workers, and what WorkCover can do to keep large corporate employers in the WorkCover fund. As a result of this review, WorkCover reduced the average premium rate from \$1.20 to \$1.15 and maintained this rate for three years. Benefit entitlements were increased to 75% of normal weekly earnings and 70% of Queensland ordinary time earnings for the whole period from

26 weeks to five years. Furthermore, the additional lump sum compensation payable was increased to \$218 400 and the threshold level of work-related impairment reduced from 50% to 30%.

In November 2009, the Board reported to government increased financial pressures due to the GFC and growth in common law claims. The Board recommended a number of changes. The Queensland Government then undertook a review with key stakeholders and as a consequence, announced legislative changes to the Queensland's workers' compensation scheme to ensure stability and certainty into the future. While not all of WorkCover's recommendations were accepted, the reforms placed restrictions on the damages payable for common law claims.

In June 2010, the Queensland Government announced a structural and institutional review of the working arrangements in the Queensland workers' compensation scheme. Released in October 2010, the review made 51 recommendations regarding strategies and institutional arrangements to ensure clear roles and functions for Q-COMP, WorkCover and the Department of Justice and Attorney-General, and that information is readily available to stakeholders (refer Appendix 6). Before the recommendations were even endorsed by government, the key agencies decided to implement improvements such as the establishment of tripartite working groups and regular information sessions for key stakeholders.

WorkCover continues to have a clear determination and responsibility to apply a commercial business focus to the ongoing viability of the WorkCover fund. This, more than any other single factor, has helped WorkCover to be the leader it is today. Over 14 years ago the Government owned a poor performing organisation with a \$320 million deficit. Today, WorkCover has transformed into a financially stable, successful business with high customer engagement ratings, and is one the best insurers in the workers' compensation industry. The vision to excel in workers' compensation continues to drive WorkCover to ongoing success.

# Key achievements

The following are the key achievements that have transformed WorkCover Queensland to date:

## Customers

- reinvigorated our customer service model in 2011 by bringing all areas of claims management together and aligning employers and claims based on industry
- began measuring customer engagement in 2010
- in 2008 introduced harmonised claim forms for multi state employers that can be used in New South Wales, Victoria, and Queensland
- in 2011 upgraded our website to provide a more modern and user-friendly environment for customers and stakeholders, and to better support online services
- developed a suite of online services to allow customers and stakeholders to perform functions such as view remittance notices and claims information, pay premiums, take out a new policy, access Certificate of Currency and send information to WorkCover
- in 2011 refined the WorkCover Customer Service Commitment to reflect our ongoing commitment to customer service
- embedded host employment into our rehabilitation service offering to help workers who are unable to return to their previous employer
- in 2009 introduced convenient, flexible payment options for employers, including interest free monthly and quarterly payments and a 3% discount to employers who pay their annual premium early
- developed an employer consultancy program, including a scorecard for specific employer groups, to make it easier for our employers to manage their premium
- introduced 'Ontrack', a new approach to claims management, managing claims within an injury framework and tailoring an individual plan for each worker
- held regular stakeholder forums to listen to customers and to act on their feedback
- introduced Electronic Funds Transfer (EFT) for payment for all customers and providers to ensure quick payment
- in 2010, upgraded our industry classification system for premium to be based on the current Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006
- increased customer satisfaction for workers from 71% in 1999 to 78.3% in 2009 (measured by independent and external surveys)
- increased customer satisfaction for employers from 70% in 1999 to 76% in 2009 (measured by independent and external surveys)
- delivered a number of claim lodgement options such as doctor fax fee initiative (lodging a claim through the treating doctor), online and phone to enable claims to be lodged sooner, helping workers to return to work faster— 12.4% of claims are now received within one day of the injury
- in 2011 returned over 93% of workers to work at the time that the claim was closed
- improved the claims decision process such that 85% of claims are now decided within ten days from registration
- reduced outstanding common law claims, which once exceeded 7 500 at any one time to approximately 3 800 in 2010–2011
- continued to provide employers with one of the lowest average workers' compensation rates in Australia, with an average 2011-2012 premium rate of \$1.42
- less than 4.5% of statutory claims go to common law and approximately 99% of common law claims are settled before going to court.

## Finances

- repaid the Government's total capital investment of \$105 million within five years of operation
- moved out of deficit in 1997 and continue to maintain a strong equity position since
- maintained a fully funded position in line with the *Workers' Compensation and Rehabilitation Act 2003*.

## Organisation

- established and maintained a strong commercial focus and self assessment culture at the Board and management levels
- successfully replaced Work Cover's core computer system, with subsequent upgrades, as part of an ongoing information technology strategy
- introduced a range of training, tertiary education, and leadership development programs for WorkCover people
- implemented a health wellbeing program, including voluntary health assessments for WorkCover people
- increased the number of permanent and part time roles for WorkCover people
- provided more flexible working arrangements for WorkCover people to better accommodate real work life balance
- moved to an employee engagement platform and conducted our first employee engagement survey in 2009, with 89% of our people responding to the online survey in its first year, increasing to 90% involvement in the second year.

## Key review and legislative milestones

The Kennedy Report emphasised the need for ongoing review and revision of WorkCover Queensland. It recognised that a business as important and complex as workers' compensation insurance must be regularly assessed to ensure it operates at its maximum potential.

The review and legislative processes since the 1996 Kennedy inquiry are summarised below.

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### February 1996

#### **Kennedy inquiry commissioned by State Government**

Concern about the potential extent of the 'unfunded' liabilities of the then Workers' Compensation Board of Queensland, together with other factors, led to the establishment of a Commission of Inquiry by the newly elected coalition government. This inquiry was headed by Queensland businessman Mr Jim Kennedy AO.

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### July 1996

#### **Kennedy Report completed**

On 30 June 1996, Mr Kennedy submitted his report, including 79 recommendations, to the State Government and it was tabled in Parliament on 10 July 1996. The report revealed a 'black hole' of \$320 million in unfunded liabilities (refer to Appendix 1).

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### February 1997

#### **WorkCover Queensland Act 1996**

Most of the Kennedy recommendations were incorporated in the *WorkCover Queensland Act 1996*, which established WorkCover Queensland as a commercially run, government owned statutory authority (refer to Appendix 4).

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### July 1999

#### **Definitions of 'worker' and 'injury'**

While the recommendations in the Kennedy Report were being implemented, Labor returned to government in Queensland. The incoming Minister, the Honourable Paul Braddy, Minister for Employment, Training and Industrial Relations, directed WorkCover Queensland to investigate and advise on policy options with respect to premium compliance, self-insurance, and the definition of 'worker' and 'injury'. As a result, the *WorkCover Queensland Amendment Act 1999* introduced changes to ensure that the rights of injured workers remained balanced with competitive premiums for employers, whilst maintaining a secure and viable workers' compensation system. Part of these changes included the removal of the self-rating option and surcharge, introduction of self-insurance criteria, and a more independent, transparent review process (refer to Appendix 4).

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### March 2000

#### **Review of EBR**

On 1 March 2000, Mr Braddy sought an external, independent opinion of recommendations in the form of a review of the EBR formula used by WorkCover Queensland to set premiums. Mr Braddy asked Mr Kennedy to report to him 'as to the appropriateness or otherwise of [WorkCover Queensland and industry] recommendations'.

Mr Kennedy examined the recommendations with the Chairman of WorkCover Queensland, Mr Ian Brusasco AM, the CEO, Mr Tony Hawkins, and WorkCover Queensland's actuaries (refer to Appendix 2).

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### July 2000

#### **Definition of a worker**

The *WorkCover Queensland and Other Acts Amendment Act 2000* changed the definition of 'worker' from

a PAYE taxpayer to a person working under contract of service, irrespective of taxpaying status. (refer to Appendix 4).

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## **December 2000**

### **National Competition Policy review**

During the last part of 2000, the NCP review was conducted to examine the changes made based on Mr Kennedy's recommendations (refer to Appendix 3).

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## **July 2001**

### **Increase in benefits payable**

The *WorkCover Queensland Amendment Act 2001* increased maximum lump sum benefits payable to dependants on the death of a worker to \$250 000, and for an injured worker to \$150 000 (refer to Appendix 4).

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## **July 2003**

### *Workers' Compensation and Rehabilitation Act 2003*

The *Workers' Compensation and Rehabilitation Act 2003* established Q-COMP as a statutory body to regulate Queensland's workers' compensation scheme, ensuring independent, transparent reviews and scheme regulation. This legislation maintained WorkCover Queensland as a fully commercial statutory body (refer to Appendix 4).

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## **October 2003**

### **Productivity Commission interim report**

The federally initiated Productivity Commission reviewed the overall framework of national workers' compensation. During this review, WorkCover Queensland strongly supported a consistent approach to the management of workers' compensation benefits and premiums in general. However, as one of the only fully funded workers' compensation insurers in Australia that satisfied government prudential requirements, WorkCover Queensland opposed proposals for the imposition of a national workers' compensation scheme that would completely erode its strong financial position (refer to Appendix 5).

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## **July 2004**

### **Federal Government response to Productivity Commission final report**

In July 2004, the Federal Government responded to the Productivity Commission's final report by ruling out the establishment of a national workers' compensation scheme.

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## **October 2004**

### **The Successful balance**

The successful balance assessed the milestone events, decisions, and strategies from 1998–2004, particularly with reference to Kennedy Report recommendations. The report also identifies the challenges ahead, and outlined strategies to meet those challenges to continue WorkCover Queensland's success.

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## **July 2005**

### **Increase to benefits for injured workers**

The review recommended greater flexibility in the self-insurance licensing, the workplace rehabilitation requirements, and a greater focus on return to work.

The legislation increased benefits for injured workers and their families building on the scheme's focus of providing enhanced compensation to more seriously injured workers and to minimise immediate financial hardship on families if a worker was fatally injured as a result of a work-related injury.

As a result of the Federal Government's decision to allow eligible corporations to self-insure nationally, the legislation was required to protect WorkCover Queensland and employers in general from the impacts of employers exiting the WorkCover Queensland scheme (refer to Appendix 4).

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## **November 2005**

### **Increase in benefits for workers**

The *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005* improved worker benefits for injured workers by extending the step-down in benefits from 39 to 52 weeks.

Compensation to dependent family members on the death of a worker increased and new benefits for totally dependent spouses and non-dependent family members were introduced. An additional lump sum payable to workers with latent onset injuries that are terminal was made available. The date of injury was changed from the actual date of exposure to the date the injury is diagnosed (refer to Appendix 4).

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## **May 2006**

### **Employment protection for workers**

The *Workplace Health and Safety and Other Acts Amendment Act* introduced employment protection for workers who sustain a work-related injury or disease for a period of 12 months, transferred from the *Industrial Relations Act 1999* to the *Workers' Compensation and Rehabilitation Act 2003* (refer to Appendix 4).

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## **April 2007**

### **Kennedy limited review of the Queensland workers' compensation scheme**

A second Kennedy review was commissioned by the State Government in relation to some specific matters concerning the Queensland workers' compensation scheme. The review:

1. confirmed the sustainability of a premium rate of \$1.15 per \$100 of wages over 3 years
  2. recommended an appropriate package of worker benefits and strategies to enhance fairness for longer-termed injured workers and reduce the duration of workers compensation claims including early return to work
  3. provided advice on arrangements that could be introduced to assist WorkCover in keeping large employers in the fund.
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## **January 2008**

### **Increase in benefits for workers**

The *Workers' Compensation and Rehabilitation and Other Acts Amendment Bill 2007* improved benefits for injured workers including reduced decision making timeframes for all statutory claims to 20 days, removed the one and two year step-down of benefit entitlements, thereby increasing the benefit to 75% of normal weekly earnings, and 70% of Queensland ordinary time earnings for the period from 26 weeks to five years. The amendments also increased the maximum additional lump sum compensation payable to \$218 400 and increased access to additional lump sum compensation by reducing the threshold level of work-related impairment from 50% to 30%.

A number of minor amendments (originally recommended in the 1996 Kennedy Review but not implemented at that time) were also introduced including breaking the nexus between statutory benefits paid and death benefits, and streamlining certain procedures for insurance, compensation, and damages (refer Appendix 4).

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## **November 2008**

### **Introduction of benefits for dependants**

The *Workplace Health and Safety and Other Legislation Amendment Act 2008* introduced a number of new benefits for dependants of sufferers of work-related latent onset disease, such as mesothelioma. A new lump sum entitlement of 15% of the maximum death benefit was established for dependants of a worker who had already received a payment of lump sum compensation or damages for a latent onset injury that was in a terminal condition. An allowance for reasonable funeral expenses of 2% of the maximum death benefit was also made available to dependants (refer Appendix 4).

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## **December 2008**

### **Methods of communication**

The *Transport and Other Legislation Amendment Act 2008* allowed for the lodgement of workers' applications and certain other forms by telephone, as well as allowed the worker to provide verbal notice to an insurer on returning to work (refer Appendix 4).

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## **December 2009–February 2010**

### **Government discussion paper and stakeholder consultation**

Following its concern of the impact of the GFC and increasing common law claim numbers and costs, the WorkCover Queensland Board tabled a report to the Honourable Cameron Dick MP. The Minister then announced that after considering the report, the government had prepared a discussion paper *The Queensland Workers' Compensation Scheme: Ensuring Sustainability and Fairness*. The discussion paper outlined options to ensure WorkCover maintained its position as the most stable workers' compensation scheme in the nation and was circulated to stakeholders for input.

A reference group of key stakeholders including unions, employer organisations and lawyers, was convened to provide advice to government about the options proposed in the discussion paper to ensure the scheme maintains its position as the most stable workers' compensation scheme in the nation.

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## **June 2010**

### **Employer liability and excess**

Significant changes were seen as a result of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2008*. This Act addressed the increased difficulty faced by employers in resisting claims for damages as a result of the Queensland Court of Appeal decision in *Bourk v Power Serve Pty Ltd & Anor* [2008] QCA 225, by stating that nothing in the *Workplace Health and Safety Act 1995* (WHS Act) creates a civil cause of action based on a contravention of a provision under the WHSA. This amendment addressed a perception that strict liability attaches to an employer if a work injury has occurred, regardless of fault.

Further, the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2008* (the Act) increased obligations on third parties to participate meaningfully in pre-court processes, allowed a court to award costs against plaintiffs whose claims are dismissed and harmonised common law claims brought under the Act in terms of liability (standard of care), contributory negligence and caps on general damages and damages for economic loss.

The Act increased the amount of employer excess to 100 percent of Queensland Ordinary Time Earnings or one week's compensation, whichever is the lesser, and removed the option for employers to insure against their excess. It allowed self-insurers to take on a higher statutory reinsurance excess in order to lower reinsurance premium (refer Appendix 4).

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## **June 2010**

### **Robin Stewart-Crompton review commissioned by State Government**

Honourable Cameron Dick, MP requested an independent structural review into the state's workers' compensation system. The review was to consider claims management, common law settlements, rehabilitation and return to work, as well as legal costs and other associated legal matters. It was carried out by Robin Stewart-Crompton, former chair of the national review into model workplace health and safety laws, and involved extensive consultation with stakeholders.

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## **May 2011**

### **State Government approves Robin Stewart-Crompton review recommendations**

The Government approved the 51 review recommendations and introduced the Work Health and Safety Bill in an effort to remove confusion and complexity caused by Australia's multiple workplace laws (refer Appendix 6).

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## **June 2011**

### **Scheme review**

The Work Health and Safety Amendment Act 2011 implemented a key structural review recommendation to mandate a review of the workers' compensation scheme every five years. The Act also allowed for a worker to accrue, and require an employer to pay an entitlement to, leave while off work on workers' compensation.

WorkCover was also authorised to release project-specific injury data to principal contractors in charge of construction projects to monitor project safety and performance. This amendment also requires construction contractors who are employers to provide evidence of their workers' compensation insurance to the principal contractor in charge of the project (refer Appendix 4).

## Finances

WorkCover Queensland is fully funded and compliant with all government and prudential regulations, recovering from a deficit equity position of \$320 million in 1996.

At inception, the initial objective of the Board and senior management was to clean up the balance sheet. To do this, they went back to basic business principles and disciplines such as corporate and business unit planning and performance monitoring. An Audit Committee was established to assist WorkCover to maintain strong and efficient accounting, administrative, and operating controls. Risk management was introduced including an annual risk analysis, to appropriately identify and manage risk.

In the early years of operation, WorkCover worked hard and cemented the foundations for strong future growth. To ensure the organisation's financial future, it was clear that WorkCover needed to focus on achieving best practice as an organisation, insurer, and partner in the work health and safety of all Queenslanders.

Tables A and B show key and historical financial data over the last 15 years. Further financial information can be found in Appendix 7.

### Financial stability

In-line with the original Kennedy Report recommendations, the State Government agreed to inject \$105 million in capital over a period of three years, and to waive WorkCover's tax equivalents until 15% solvency was achieved. The Board continued to invest in the financial future of the organisation and, during 2000–2001, WorkCover was considered financially stable and had repaid the total capital investment made by the Government at inception. From then on, the Board has been solely responsible for the financial stability of WorkCover.

By maintaining WorkCover's financial independence, the Board has been able to pass on the benefits of success to its customers—workers and employers.

### Investment fluctuation reserve

During 2000, the Board introduced an investment fluctuation reserve, to minimise investment volatility and provide ongoing certainty for premium setting. The investment fluctuation reserve proved to be a sound risk management initiative. In 2002, global effects hit the stock markets and WorkCover was able to continue to provide stable benefits and premiums to workers and employers, as a result of this risk management initiative. Since 2008, the investment fluctuation reserve has continued to be effected by ongoing varying economic factors as well as a marked increase in the number of common law claims and costs. As WorkCover moves forward, the Board will continue to monitor its investment strategy and asset allocation to ensure WorkCover maintains a balanced investment profile and long-term outlook.

# Table 1—Key financial statistics

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>Average premium rate %(achieved)</b>	2.15	2.15	2.04	1.75	1.55	1.55	1.55	1.55	1.55	1.42	1.20	1.15	1.15	1.15	1.27
<b>Average premium rate %(targeted)</b>	2.15	2.15	1.85	1.75	1.55	1.55	1.55	1.55	1.55	1.43	1.20	1.15	1.15	1.15	1.30
<b>Declared wages (\$Bn)</b>	27.1	29.5	34.0	35.0	35.7	38.5	42.9	47.5	52.6	62.5	66.7	78.9	81.7	83.2	92.3
<b>Number of statutory claims</b>	85,110	79,686	72,031	69,620	73,090	72,989	72,864	73,286	74,213	76,309	87,310	92,795	92,390	88,606	92,659
<b>Number of common law claims</b>	2,884	2,241	1,911	1,612	1,634	2,396	2,640	2,952	2,470	2,154	2,494	2,698	3,653	4,262	3,863
<b>Investment return (%)</b>	16.0	10.2	10.9	11.6	5.4	(2.8)	(1.3)	13.5	13.9	14.3	14.1	(2.8)	(9.4)	11.8	13.0
<b>FTE establishment</b>	983	1051	901	905	917	917	1019	960	999	1023	941	904	866	840	803
<b>Premium revenue (\$M)</b>	615	663	586	532	515	546	672	718	783	861	815	865	950	959	1,136
Total claims payments (\$M)	409	408	414	449	485	523	569	580	626	719	789	875	1,003	1,150	1,129
Total claims recoveries (\$M)	(10)	(16)	(20)	(20)	(24)	(25)	(26)	(24)	(26)	(30)	(24)	(26)	(36)	(41)	(45)
<b>Total net claims payments (\$M)</b>	399	392	394	429	461	498	543	556	601	689	765	849	967	1,109	1,085
- Gross statutory payments (\$M)	200	186	187	206	256	286	303	312	347	421	486	546	607	595	615
- Statutory recoveries (\$M)	(10)	(16)	(20)	(20)	(24)	(21)	(24)	(22)	(21)	(27)	(22)	(25)	(35)	(39)	(43)
- Net statutory payments (\$M)	190	170	167	186	232	265	279	290	326	394	464	521	572	556	572
- Gross common law payments (\$M)	209	222	227	243	229	237	266	269	280	298	303	329	396	555	515
- Common law recoveries (\$M)	-	-	-	-	-	(4)	(3)	(2)	(5)	(3)	(2)	(1)	(1)	(2)	(2)
- Net common law payments (\$M)	209	222	227	243	229	233	263	266	274	295	301	328	395	553	513
<b>Net outstanding claims liability movement (\$M)</b>	238	229	55	(40)	(181)	3	28	31	236	(561)	209	155	446	340	257
<b>Net Outstanding claims liability provision (\$M)</b>	1,703	1,931	1,986	1,857	1,645	1,645	1,666	1,697	1,921	1,357	1,566	1,720	2,166	2,506	2,763
<b>Underwriting expenses (\$M)</b>	75	108	103	104	104	112	120	128	151	157	156	155	161	161	171
<b>Investment income (\$M)</b>	214	191	226	275	133	(65)	(28)	279	323	374	411	(80)	(266)	280	316
<b>Total equity position (\$M)</b>	(126)	43	300	519	600	466	444	636	719	1,392	1,470	1,218	648	385	343
<b>Investment fluctuation reserve (\$M)</b>	0	0	0	93	271	137	111	296	285	894	967	703	158	0	0
<b>Funding ratio (%)</b>	94%	102%	114%	126%	133%	127%	126%	136%	133%	178%	183%	164%	128%	114%	112%

# Table 2—Historical financials

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>Income Statement</b> (\$000's)															
Premium revenue	614,697	662,894	586,283	531,764	515,413	546,267	671,816	717,528	782,770	861,042	814,514	865,210	949,975	958,996	1,136,273
Net claims incurred	(626,060)	(607,810)	(435,415)	(376,500)	(280,016)	(500,807)	(570,429)	(682,153)	(923,728)	(231,316)	(1,096,625)	(1,118,193)	(1,546,312)	(1,587,892)	(1,492,624)
Operating expenses	(76,644)	(108,237)	(102,832)	(103,667)	(103,693)	(112,004)	(119,743)	(45,522)	(65,825)	(53,489)	(41,814)	(42,406)	(27,492)	(21,689)	(18,985)
<b>Underwriting result</b>	(88,007)	(53,153)	48,036	51,597	131,704	(66,544)	(18,356)	(10,147)	(206,783)	576,237	(323,925)	(295,389)	(623,829)	(650,585)	(375,336)
Investment income	215,432	191,265	226,287	275,410	133,388	(64,641)	(28,424)	278,534	323,021	373,888	411,293	(80,354)	(265,540)	280,391	316,116
Other income/expenses	(1,386)							(3,750)	(4,510)	(4,510)	(5,305)	(5,033)	(4,557)	(3,231)	(3,738)
Grossed up tax equivalents		17,475	74,452	0	0	0	0	0	0	0	0	0	0	0	0
<b>Operating result before tax</b>	126,039	155,587	348,775	327,007	265,092	(131,185)	(46,780)	268,387	112,488	945,615	82,063	(380,776)	(893,926)	(373,425)	(62,958)
Income tax (expense)/benefit	(28,206)	(55,969)	(126,524)	(107,561)	(73,142)	57,819	24,608	(75,424)	(25,757)	(276,511)	(17,305)	121,552	326,866	114,289	21,345
<b>Operating result after tax</b>	97,833	99,618	222,251	219,446	191,950	(73,366)	(22,172)	192,963	86,731	669,104	64,758	(259,224)	(567,060)	(259,136)	(41,613)
Other comprehensive income													(2,819)	(3,699)	(629)
<b>Total comprehensive income/loss</b>													(569,879)	(262,835)	(42,242)
<b>Balance Sheet</b> (\$000's)															
Total assets	1,805,534	2,229,698	2,410,616	2,547,403	2,443,502	2,163,077	2,148,539	2,379,279	2,878,894	3,171,560	3,235,007	3,127,456	2,981,713	3,081,628	3,284,958
Total liabilities	1,930,484	2,186,951	2,110,618	2,027,959	1,843,686	1,696,627	1,704,238	1,743,583	2,160,249	1,779,911	1,764,873	1,909,924	2,334,060	2,696,810	2,942,382
<b>Net Assets</b>	(124,950)	42,747	299,998	519,444	599,816	466,450	444,301	635,696	718,645	1,391,649	1,470,134	1,217,532	647,653	384,818	342,576
<b>Equity</b>															
Capital	67,499	136,578	171,578	171,578	60,000										
Reserves				92,850	270,716	137,450	111,081	296,276	285,928	899,256	986,046	728,859	180,841	19,052	18,423
Accumulated surplus	(193,449)	(93,831)	128,420	255,016	269,100	329,000	333,220	339,420	432,717	492,393	484,088	488,673	466,812	365,766	324,153
<b>Total equity</b>	(125,950)	42,747	299,998	519,444	599,816	466,450	444,301	635,696	718,645	1,391,649	1,470,134	1,217,532	647,653	384,818	342,576
<b>Funding ratio</b>	94%	102%	114%	126%	133%	127%	126%	136%	133%	178%	183%	164%	128%	114%	112%

# Corporate governance

## Governance

Since the late 1990s, WorkCover has undergone significant structural, business, and cultural change. Over that time, WorkCover has provided the appropriate structures and processes to manage and implement any changes to embrace ongoing technological and business initiatives, and is well placed to continue doing so. This is in-line with community expectations of a government owned organisation established to insure and rehabilitate injured workers.

WorkCover has evolved as a statutory body and commercially focused insurer, fully complying with legislative and corporate governance requirements. The corporate governance structure guides the way WorkCover manages its business, minimises its risks, and ensures integrity. The structure is supported by an integrated framework for governance, ethics, compliance and risk management. Reporting against this framework occurs monthly at board meetings. WorkCover's systems are based on strong ethical foundations and its commitment to fairness, accountability, and transparency.

### Internal audit

In 2005–2006 WorkCover outsourced the internal audit function to achieve a more efficient allocation of resources, further independence from management, and access to a broader range of audit, risk, and internal control frameworks. The function is currently outsourced to a specialised accounting firm which complies with an Audit Committee approved Internal Audit Charter.

### Corporate planning

WorkCover undertakes a rigorous planning process on an annual basis and produces a four year corporate plan that sets the strategic direction of the insurer, and a statement of corporate intent which outlines in greater detail the objectives and performance targets. Both documents are approved by the Minister in accordance with the *Workers' Compensation and Rehabilitation Act 2003*, and specifically outline WorkCover's:

- vision, values, and goals
- business divisions
- key corporate drivers, and
- business projections.

All of these documents are available on WorkCover's website.

## Ethics

### Code of conduct

WorkCover implemented an updated code of conduct in accordance with the new requirements of the Public Sector Ethics Act 1994. The code has been approved by the Board and training performed for staff.

### Environmental regulation

WorkCover has established an Environmental committee to implement strategies to reduce environmental impacts, set goals in relation to those strategies and monitor performance against those goals.

WorkCover has reduced direct energy consumption by 16% since the 2005-06 baseline year and are on track to meet the target of 20% by 2014-15.

### Public interest disclosures

WorkCover has implemented a Public Interest Disclosure policy in accordance with the *Public Interest Disclosure Act 2010* from 1 January 2011.

## Compliance

WorkCover has established a comprehensive compliance program which encompasses the following activities:

- regularly reviewed corporate policies and procedures
- a compliance obligations register
- quality assurance reviews
- internal and external audits
- training program for key compliance requirements
- internal compliance reviews
- customer compliance reviews (and associated investigations and/or prosecutions).

WorkCover has a dedicated premium compliance team focussing on the investigation and audit of businesses to ensure they are meeting their premium obligations under the Act. The team specifically targets:

- those businesses who employ workers but are not maintaining an accident insurance policy
- current policyholders to ensure they are declaring the correct amount of wages.

The team utilises a variety of detection methods to achieve a predominantly targeted approach to compliance. This includes extensive data matching and sophisticated data mining technology. WorkCover has recently entered into a data sharing arrangement with the Australian Taxation Office.

## Risk management

WorkCover Queensland follows a risk management policy based on AS/NZS 31000:30009 Risk Management—Principles and guidelines, which involves the establishment of an appropriate infrastructure and culture designed to systematically identify, analyse, treat, monitor, and communicate key risks associated with its activities. The risk management policy is available on WorkCover's website.

### Workplace health and safety

WorkCover has both a workplace health and safety and injury prevention management committee that maintain a strong culture of employee awareness of health and safety first. As a result, WorkCover continues to achieve a low incidence of claims.

### Business continuity management

WorkCover's business continuity and disaster recovery plan has been developed to ensure minimum disruption to operations and customers in the event of a major incident. These plans are reviewed and tested on a regular basis and were successfully implemented during the 2010–2011 Queensland floods.

### Complaints

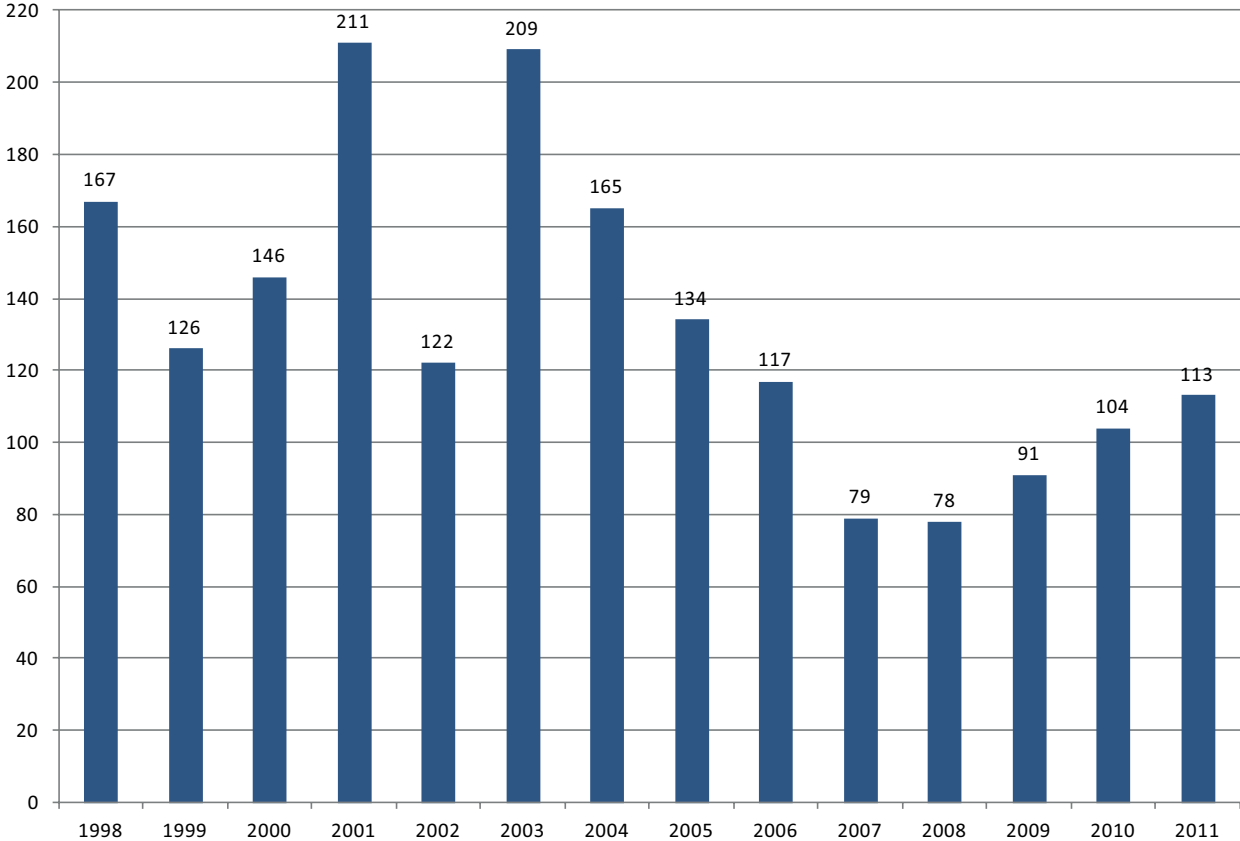
All complaints are managed in accordance with Queensland Ombudsman's Guide to Developing Effective Complaints Management Policies and Procedures, which incorporates AS ISO 10002:2006 Customer Satisfaction—Guidelines for complaints handling in organizations and the Queensland Ombudsman's Guide to Developing Effective Complaints Management Policies and Procedures.

WorkCover believes that all customer feedback, positive or negative, presents an opportunity for improvement. WorkCover is committed to resolving customer complaints quickly and fairly, and empowers its people to resolve issues as they arise.

WorkCover has a centralised system for recording, monitoring, and responding to complaints to ensure they are actioned appropriately. In the 2010–2011 year, WorkCover received 95 justified complaints compared to 83 from the previous year. The Queensland Ombudsman received 113 complaints (see Figure 1) relating to WorkCover during 2010–2011 with 97 of these being declined.

**Figure 1: Complaints to the Queensland Ombudsman about WorkCover Queensland**

Source: Queensland Ombudsman



## Employers and premium

In order to provide the lowest possible premiums for employers, WorkCover restructured the insurance side of its business—introducing a number of initiatives, including EBR premium calculation, customer feedback, assessing, and compliance.

In the 1990s, the State Government recognised that Queensland's workers' compensation scheme was in a critical financial position with premium rates among the highest in Australia, and a continuing massive financial deficit. A significant recommendation of the Kennedy Report was that the scheme must run like a commercial business with fairness in premium setting.

### The experience based rating system

The introduction of the EBR system of calculating premium in 1997 addressed this recommendation by providing greater financial incentives for employers to improve their risk and claims management.

Under this system, employers with no or few claims are rewarded with reduced premiums. The average net premium rate for the first year of EBR was \$2.145 per \$100 wages. WorkCover commissioned actuarial assessments for over 200 of the largest employers and it was identified that approximately 73% of those employers could expect to pay lower premiums under the new EBR system.

To coincide with the introduction of the new system, an extensive communication program, including state wide seminars and a direct mail campaign, was launched to inform Queensland businesses and regular consultation took place with employers who would be most affected by the change.

Three years after its introduction, Mr Kennedy undertook a review of recommendations made by WorkCover and the industry to change EBR (refer to Appendix 2). As part of the review, a number of changes were considered. Mr Kennedy's review of EBR resulted in the implementation of several significant changes, including the use of common law actual costs to alter the premium in the next assessing year to adjust for the actual settlement amount. It was considered reasonable to continue to use estimates initially, due to the long term settling of common law claims.

WorkCover recognised the success of this system could only grow with further enhancements. In October 2003, through consultation with industry, WorkCover further simplified the way that premium was calculated. The simplified method brings WorkCover in-line with best practice and other private insurers. WorkCover continues to listen to feedback and remains committed to continual review of the EBR formula.

For the first time in 2003–2004, employers were charged a premium for insurance based only on the difference between the estimated wages and actual wages declared for this period. From then on, premium rates were based on claims experience up to the date set and were not retrospectively adjusted for new claims experience.

This new method also used the latest industry rates and F factors in the calculation of premium.

F factors are used to estimate the final cost of claims for the year corresponding to the injury. They are calculated at a scheme level each year and are the same for all policies. Previously, industry rates and F factors set 18 months earlier were used in the calculation of the premium rate for a period of insurance.

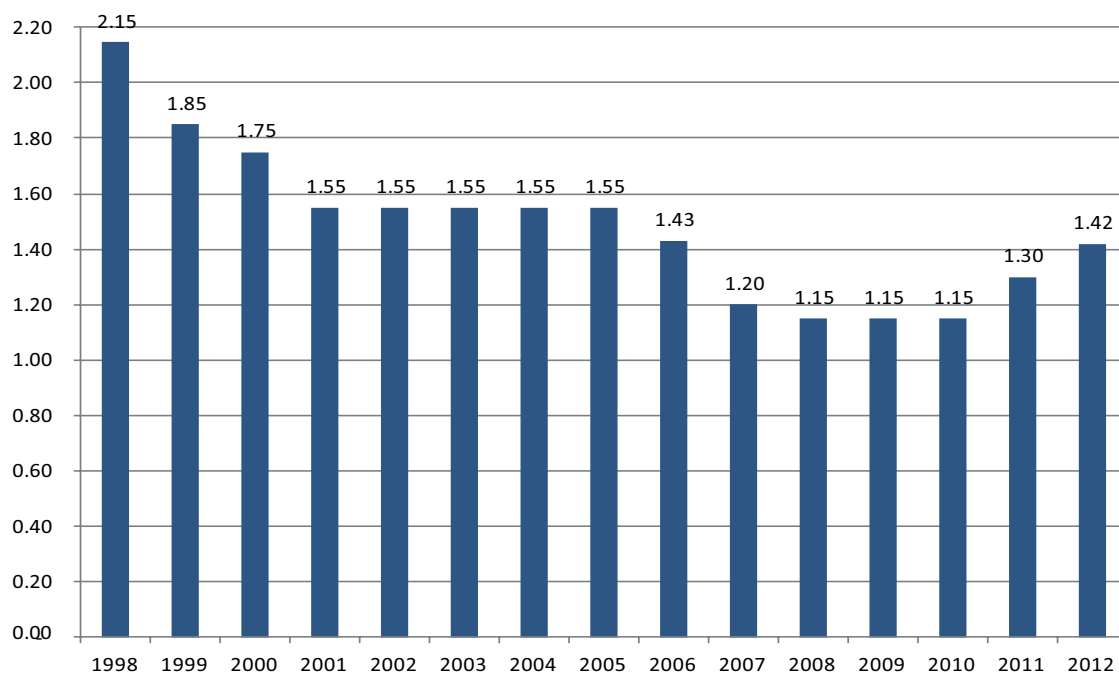
The maximum common law claim cost used in the EBR formula for an individual claim was also reduced from \$250 000 to \$150 000. This has since been indexed to \$175,000 for claims received after 1 July 2009. This change reduced the impact large common law claims costs had on premium, especially for small to medium enterprises.

The EBR system is successful because it allows the actual premium collected to reflect the costs of claims. This system provides an incentive for employers to manage their claims by implementing appropriate workplace health and safety measures and facilitating rehabilitation. WorkCover can then pass the benefits of successful claims management directly back to those employers. Employers continue

to enjoy one of the lowest average net premium rates in Australia, having reduced from \$2.145 at inception to the current \$1.42 per \$100 wages (refer to Figure 2 and 3).

**Figure 2: WorkCover Queensland's average premium rate per \$100 of wages**

Source: WorkCover Queensland Annual Reports



**Figure 3: Comparative average premium rate**

Source: Australian Safety and Compensation Council

Centrally funded											
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	
Queensland	1.55	1.55	1.55	1.43	1.20	1.15	1.15	1.15	1.30	1.42	
New South Wales	2.80	2.57	2.65	2.57	2.17	1.86	1.72	1.69	1.66	1.68	
Victoria	2.22	2.22	1.98	1.80	1.62	1.46	1.39	1.39	1.34	1.34	
South Australia	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	2.75	2.75	
ComCare	1.43	1.67	1.16	1.22	1.77	1.55	1.36	1.25	1.2	n/a	
Privately underwritten											
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	
Tasmania	3.12	2.75	2.46	2.45	2.45	1.94	1.5	1.97	n/a	n/a	
Western Australia	2.47	2.34	2.25	2.32	2.12	1.85	1.58	1.74	n/a	n/a	
Australian Capital Territory	3.13	3.07	3.08	2.93	2.66	2.28	2.14	2.03	n/a	n/a	
Northern Territory	n/a	2.44	2.29	2.03	1.81	1.81	1.77	1.82	n/a	n/a	

## Premium assessment

WorkCover understands that employers want stability in their premium setting and collection. A big step to reaching this goal was the introduction of automatic assessment for premium renewal. Over 11 000 policies were automatically assessed for the first time in 2004. The automatic process enabled these employers to obtain their premium renewals in a timelier manner. Over the next few years, WorkCover continued to trial the automatic assessment process. In 2007, as a result of these trials and in response to stakeholder feedback, WorkCover introduced a new assessment process for employers. Premiums were assessed in one of two ways—by automatic assessment or by providing wages information to WorkCover. Over 70 000 policies were automatically assessed in 2011–2012.

Employers with a previous year's premium of less than \$1200 are automatically assessed and sent a Premium Notice (automatic assessment). If the assessment is accurate, the employer can simply pay the premium by the due date. If the information used is significantly different from their actual wages, the employer needs to provide this information to WorkCover. Employers with premiums over \$1000

are required to provide wages information, however this process has also been streamlined. Wages information is due by 31 August, and employers can now provide this information online, over the phone, or by using a simplified form. As part of the update of our online services, in 2011 WorkCover contacted all employers with valid email addresses to advise them of the improved online options including entering wages, viewing premium notices and making payment. WorkCover also accepts the harmonised declaration of wages form for multi state employers.

## **Upgrading to ANZSIC 2006**

In 2010, WorkCover upgraded its industry classification system for premium, ahead of most other jurisdictions, to be based on the current Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006, from the previous ANZSIC 1993. Moving to the current edition of ANZSIC means WorkCover can better reflect the risk of industries, particularly those that have changed over time with the development of technology.

## **Increased payment options for employers**

Feedback from stakeholder forums indicated that employers want flexibility when paying their workers' compensation premium. As a result of this feedback, to help Queensland employers with cash flow and business planning, WorkCover introduced flexible premium payment options.

A 3% discount is offered to employers who pay their annual premium early (minimum premium of \$275, excluding new policy holders). Employers with a premium over \$1200 can also choose to pay by direct debit, either monthly or quarterly, at no extra charge.

## **Single point of contact and industry alignment**

WorkCover developed the customer advisor role in 2007, to help build beneficial relationships with employers. Employers now have a single local point of contact for both premium and claims. This clearly outlined approach ensures regular communication between WorkCover and Queensland employers. This has been enhanced in 2011 with the introduction of industry based allocation of policies and claims.

# Workers, claims, and rehabilitation

## Statutory claims

Before the Kennedy inquiry, the statutory claims handling system had multiple inefficiencies, leading to increased processing time, errors, and customer dissatisfaction. Forms were complex and difficult to understand and there were limited rehabilitation plans in place to help workers return to work.

A key factor in the breakthrough in claims handling was the establishment of an in-house assessing and case management model. The claims handling system used new technology and advanced workflows. WorkCover continues to streamline claims management processes and assessment, including the implementation of a dedicated team of professionals to decide all claims. WorkCover remains the only state insurer to manage all claims in-house to provide specialised workers' compensation end-to-end claim management services.

To maintain financial stability in premium setting and an appropriate balance between the needs of employers and workers, it was clear from inception that simply managing and assessing claims was not enough. There needed to be much greater focus on rehabilitation to ensure that workers returned to work both quickly and safely.

WorkCover encourages proactive industry involvement in the rehabilitation process, with the aim to increase availability and use of host employers, and aid employment for workers after participation in the host program. The host employment program became part of the core business process in 2003.

WorkCover's approach to managing claims is called 'ontrack' and was introduced in 2007–2008. It is an evidence based program that involves communicating with all parties (worker, employer, medical and allied health providers) and working together to tailor ontrack return to work plans that are supported by medically documented injury pathways. We aim to achieve sustainable return to work outcomes, including helping to reduce the injury impact on the worker and their workplace.

WorkCover's commitment to delivering the best possible service for customers has seen the development of a new customer relationship model. The new model will allow WorkCover to not only deliver better service, but to enhance relationships with customers. Two key elements of the new customer relationship model are: bringing all areas of claims management together and aligning employers based on their industry.

In allocating each of the service regions specific industries to manage, WorkCover will improve its understanding of customers operating within specific industries and their needs for the services offered. It will also allow WorkCover to develop industry based strategies to deliver better outcomes in injury prevention, stay at work and return to work.

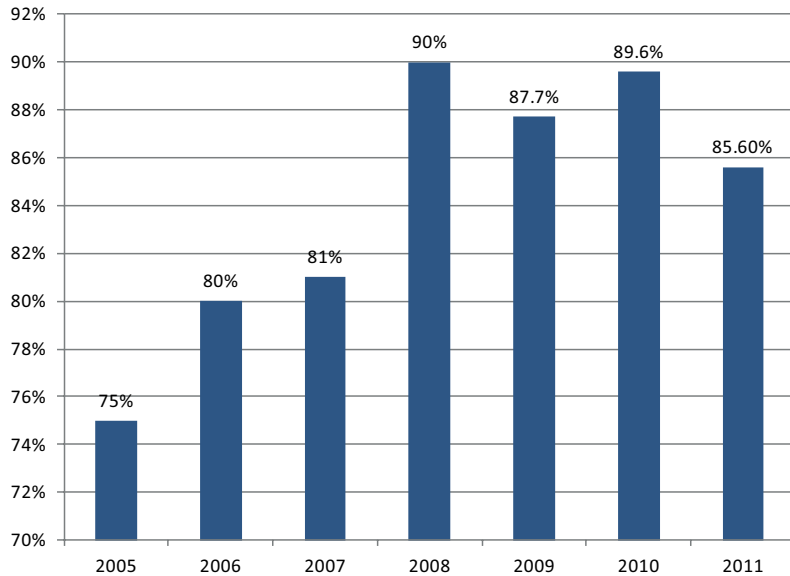
WorkCover focuses on encouraging early lodgement of claims and making quick decisions, to give injured workers the best opportunity to start rehabilitation and return to work programs as soon as possible.

In 1999, about 55% of all claims were being decided in a period of five days. WorkCover currently manages over 92 000 statutory claims for compensation, and in 2011, over 85% of all claims were decided in ten days or less (refer Figure 4). Going forward, WorkCover will work towards the industry benchmark of 98% of all workers' compensation claims to be decided within twenty days of lodgement.

WorkCover encourages workers and employers to make a claim together, either online or over the phone. By doing so, WorkCover is able to quickly gather all the right information needed to assess the claim, and it is a good opportunity for the worker and employer to discuss the injury and begin thinking about the return to work process. The implementation of a doctor fax fee initiative in 2006, allowed workers to lodge a claim for workers' compensation at the doctors surgery. Not only do our customers benefit from all of these flexible options by receiving a claim faster, it also means less paperwork, which is easier for all parties involved.

**Figure 4: Percentage of statutory claims decided in ten days**

Source: WorkCover Queensland Annual Reports



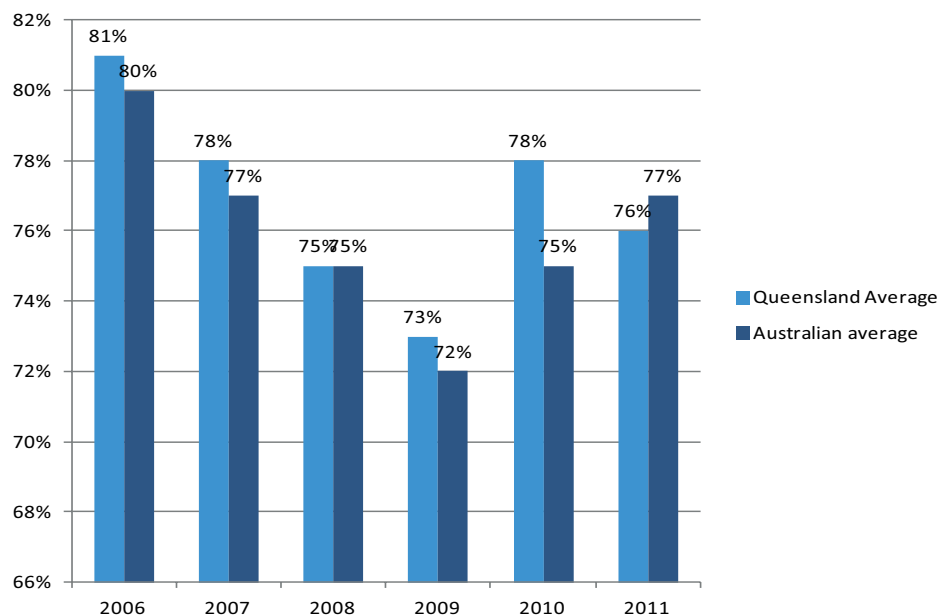
In support of this rehabilitation and return to work focus, WorkCover developed the role of customer advisor to manage claims proactively, fairly, expeditiously, and cost efficiently. The single point of contact for workers and employers builds strong relationships through open communication. In 2006, WorkCover streamlined administrative functions in the customer service centres to allow customer advisors to spend more time helping workers return to work.

The customer service model was restructured in July 2011 with the introduction of an end-to-end claim management process. Common law, claims determination and customer service areas have merged together, allowing WorkCover staff to take a holistic approach to the claims processes for both statutory and common law claims. This will help to develop industry based strategies to deliver better outcomes in injury prevention, stay at work and return to work.

In 2011, WorkCover returned over 93% of workers to work following their claim, and had a durable return to work rate of 76% (Figure 5).

**Figure 5: Durable return to work rate**

Source: Australian and New Zealand Return to Work Monitor Report



## Common law claims

At WorkCover's inception, one of the major challenges to the future success or failure of the organisation was the common law process. The process was entrenched in a standalone culture, combining an apparent lack of empathy toward workers with poor service provider arrangements.

A key factor was to reduce the number of open common law claims—workers and employers were waiting an average of three years for claim outcomes.

It was also vital to bring common law service providers in-line with WorkCover's own standards of customer service. As a result, WorkCover overhauled all of its common law service provider arrangements. Formal tender processes were undertaken with solicitors, barristers, injury management providers, and factual investigators. All of the new panel providers were required to meet service level standards set by WorkCover. These service level standards are designed to assist with the delivery of quality claims outcomes and, as always, aimed at improving the delivery of customer service to injured workers and employers. The overhaul was not well received by some long standing providers, such as factual investigators, who were required for the first time to be licensed. WorkCover remained focussed during this time, as customers were the prime consideration.

The benefits of fewer open claims have appeared today, with outstanding claims reduced from 7 500 (in 1999) to less than 3 800 (in 2011). In addition, the time taken to achieve an outcome for all parties to a common law claim has been reduced from an average of three years to less than one year.

During 2002–2003 a restructure of the common law division was implemented to capitalise on available skills and resources. The major changes revolved around the establishment of a separate claims management team, involving in-house teams settling common law claims. The restructure showed savings in legal costs alone in excess of \$3 million annually.

In 2006–2007, WorkCover Queensland performed an end-to-end review of the way common law claims were managed. The outcomes were of benefit to both employers and injured workers—a single point of contact and a dedicated team to handle common law claims. A new role of in-house claims manager was also created to manage claims without a lawyer.

The introduction of WorkCover's new customer service model in 2011 saw further changes to the common law claim management process. The resolution of common law claims was brought together with other areas of claim management to allow for a complete end-to-end process, and providers on WorkCover's common law legal panel were aligned to service regions and industries.

## Compliance

Worker compliance and investigation continue to be issues of significance for WorkCover. The past few years have seen steady growth in completed investigations and reduction in claims leakage as a result of compliance strategies.

Overall, WorkCover's in-house case management, streamlined claims handling process, and the unchanged focus on returning workers to work quickly and safely has allowed WorkCover to become a leader in the workers' compensation field.

# Customer research

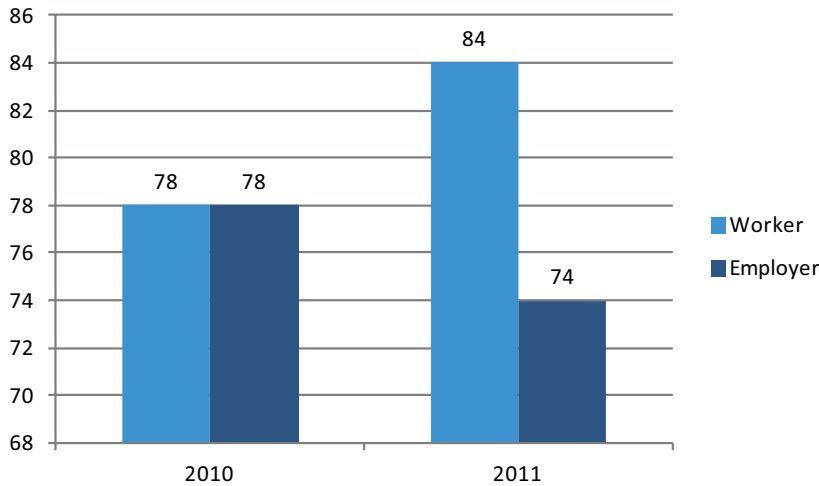
WorkCover is committed to working with its customers and stakeholders. To ensure ongoing positive relationships, WorkCover began measuring customer engagement (Figure 6) in 2010 rather than satisfaction levels (Figure 7) as it was felt the satisfaction survey results and data did not provide the tangible strategies in order to implement any necessary changes. By moving to a customer engagement survey, WorkCover gains a better understanding of the degree to which a meaningful connection has been established with its customers and stakeholders.

Figure 6 shows WorkCover’s engagement levels over the past two years and highlights a discrepancy between worker and employer engagement levels in 2011. The survey data provides the necessary information to implement enhanced strategies and help bring these results into balance and maintain positive relationships.

**Figure 6: Customer engagement research**

Source: WorkCover Queensland Annual Reports

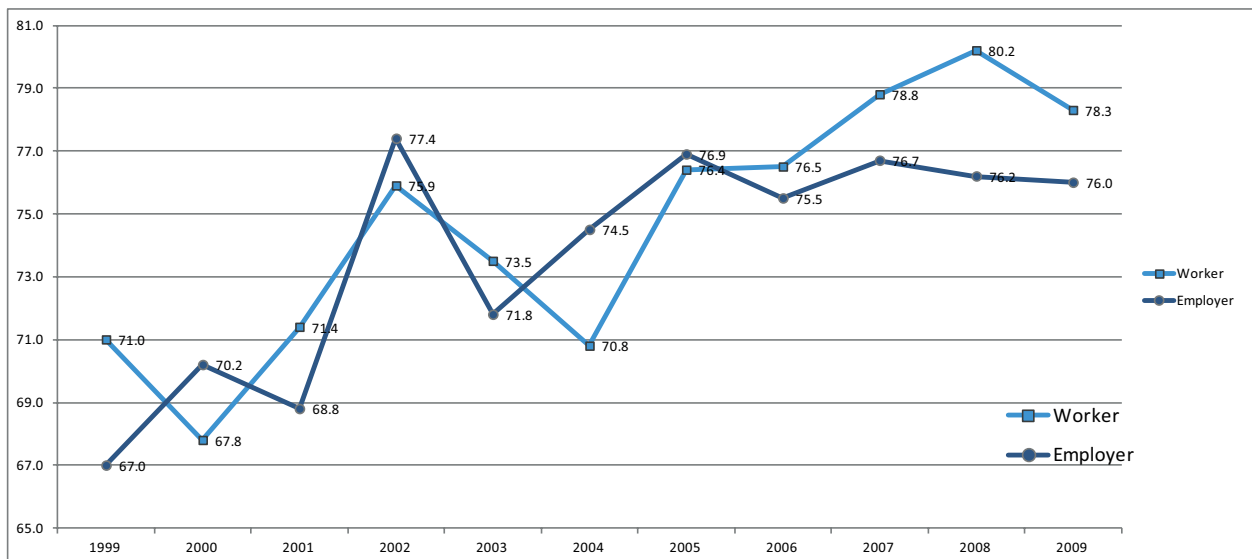
	2010	2011
Worker	78	84
Employer	78	74



**Figure 7: Customer satisfaction research**

Source: WorkCover Queensland Annual Reports

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Worker	71.0	67.8	71.4	75.9	73.5	70.8	76.4	76.5	78.8	80.2	78.3
Employer	67.0	70.2	68.8	77.4	71.8	74.5	76.9	75.5	76.7	76.2	76.0



## Appendix 1—Kennedy Report recommendations

The recommendations from the Kennedy Report tabled in Parliament in 1996.

Key	
✓	recommendation implemented
✗	recommendation not implemented
WCQA 1996	WorkCover Queensland Act 1996
WCRA 2003	Workers' Compensation and Rehabilitation Act 2003
ch	chapter
sch	schedule
s	section
ss	sections
r	regulations

	Recommendation		Narration
1	That this Report be published and copies be available on request for an appropriate charge.	✓	The Kennedy Report was tabled in Parliament on 10 July 1996. Copies were made available to all major stakeholders, CEO's of other workers' compensation authorities and interstate industrial relations Ministers.
2	That a discretionary power be included in the <i>WorkCover Queensland Act</i> for the WorkCover board, on the recommendation of the General Manager, to decide that workers' compensation cover not be extended to Queensland employers and workers in circumstances where cover is already provided under some other Act. In making a decision on an application by an employer in this regard, the WorkCover board should have a duty to ensure that workers are not significantly disadvantaged by such a decision and that the decision is in the interests of the overall Queensland scheme, employers and workers. This duty should be included in the <i>WorkCover Queensland Act</i> .	✓	s53 of the WCQA 1996, then later s49 WCRA 2003.
3	That this be a general power to ensure effective management of all similar anomalies as they arise.	✓	s53 WCQA 1996, then later s49 WCRA 2003 allows such a general power.
4	That all action by the government to return the Workers' Compensation Fund to balance, be predicated on an unfunded liability at 30 June, 1996 of \$290 million.	✓	WorkCover Queensland (WorkCover) brought itself back into the black during its second year of operation. Introduction of an investment fluctuation reserve and other sound financial management initiatives meant WorkCover has been fully self-funded since 1999-2000.
5	That the full package of reforms recommended in this Report be adopted now so as to return the Workers' Compensation Fund to full funding by 30 June, 1999.	✓	The majority of Kennedy's recommendations were implemented. The recommendations not implemented relate to: <ul style="list-style-type: none"> <li>• common law threshold and the changes to the irrevocable election</li> <li>• abolition of journey and recess claims</li> <li>• the corresponding increase in the statutory maximum</li> <li>• breaking the nexus between weekly payments and the statutory maximum payable.</li> </ul>

6	That the government accept the package of changes recommended in this review and needed to return the Fund to surplus within three years, including accepting foregoing government taxes and duties until the Fund returns to surplus.	✓	<ul style="list-style-type: none"> <li>• 1996–1997: \$32.5M refund of tax equivalents and \$35M capital injection received.</li> <li>• 1997–1998: \$51M in tax equivalent refunds and \$35M capital injection received.</li> <li>• 1998–1999: \$74.452M refund in tax equivalents and \$35M final capital injection received.</li> <li>• \$111M of capital was repaid during 2000–2001, and the final \$60M capital injection was repaid during 2001–2002. WorkCover Queensland is now a standalone insurer.</li> </ul>
7	That the objects of the workers' compensation legislation should be as follows: <ul style="list-style-type: none"> <li>a. to provide an injury insurance system which maintains balance between benefit adequacy for injured workers and premium levels for employers;</li> <li>b. to provide adequate and suitable cover for workers who suffer injury in the workplace and for dependants of workers whose death result from such injury;</li> <li>c. to make provision for employers and injured workers to participate in effective return to work programs;</li> <li>d. to provide flexible insurance arrangements suited to the particular needs of industry;</li> <li>e. to protect the interests of employers in relation to claims for damages because of injury to a worker;</li> <li>f. to establish and maintain a fully funded scheme which meets minimum insurance industry solvency standards;</li> <li>g. to provide for the efficient and economic administration of the system of injury insurance referred to in paragraph (a).</li> </ul>	✓	ch1 part 2 of the WCQA 1996, then later ch1 part 2 of the WCRA 2003.
8	That the Workers' Compensation board be abolished and in its place should be established a fully independent statutory authority to be known as WorkCover Queensland.	✓	WorkCover was established on 1 February 1997 under the WCQA 1996.
9	That the board of WorkCover Queensland shall consist of nine people appointed by the Governor in Council on the recommendation of the Minister with skills and qualifications as outlined in the Report.	✓	s381 to 398 of the WCQA 1996, then later s424 to 428 of the WCRA 2003. s381 of the WCQA 1996 originally stated that the board should consist of at least seven members. At the time of WorkCover's inception there were nine directors. When the Labor government came to power a further two directors were appointed. s424 of the WCRA 2003 states that the board should consist of not more than seven members. In accordance with this legislation, there have been seven board members since 1 July 2003.
10	That the board of WorkCover Queensland have the authority, subject to direction in writing by the Minister to set premiums and benefits and to operate workers' compensation in Queensland.	✓	s384 of the WCQA 1996. The board was given the power to set premiums subject to written direction by the Minister as detailed in s377 of the WCQA 1996 and ss481 to 484 of the WCRA 2003. Benefit setting was considered to be a government policy issue, however there is provision in both the WCQA 1996 and the WCRA 2003 for WorkCover to make recommendations in this regard.

11	That the position of General Manager to WorkCover Queensland be created under the Act, and the present Chief Executive of the Division, Mr John Hastie and his senior staff, be retained in their present executive positions for 12 months to assist the new board of WorkCover in the implementation of recommendations of this inquiry.	✓	s399 of the WCQA 1996 established the position of Chief Executive Officer. s404 of the WCQA 1996 covered Appointment of Senior Executives.  The former executive remained with WorkCover for the first 12 months. These sections are now contained in ch8 of the WCRA 2003.
12	That WorkCover Queensland and its staff not be subject to the <i>Public Service Management and Employment Act</i> , or any successor to this Act.	✓	s404 to 409 of the WCQA 1996. This later became ss447 to 452 of the WCRA 2003.
13	That appropriate policies be put in place so that staff not offered equivalent employment with WorkCover Queensland be given opportunities of redeployment within the Queensland Public Service.	✓	ch11 Part 2 Division 1 of the WCQA 1996 contained transitional provisions for the transfer of staff to WorkCover. For a period of three years, WorkCover staff were able to transfer back to the state public service.
14	That Medical Assessment Tribunals be located independently from the WorkCover Queensland Brisbane offices; with their own Secretariat and identity.	✓	Medical assessment tribunals were relocated to Wickham Terrace. Since the separation of Q-COMP as part of the WCRA 2003, MATs were subsequently located at Q-COMP's office.
15	That the workers' compensation scheme be reviewed in three years time in the light of the requirements of National Competition Policy and that this review should also examine: <ul style="list-style-type: none"> <li>• the financial performance of the Fund;</li> <li>• the extent to which the unfunded liability has been retrieved;</li> <li>• the benefits and premiums structures; and</li> <li>• the changing needs of employees and employers.</li> </ul>	✓	National Competition Policy Review 2000 – please refer to Appendix 8.
16	That the findings and recommendations relating to rehabilitation services, and contained in the Knight Performance Audit of the Workers' Compensation board of Queensland, be considered for implementation by the proposed new board of WorkCover Queensland.	✓	The Knight Report recommended closure of the South Brisbane Centre. The board resolved to try to make the centre a going concern. This was achieved to a degree. From 1 July 1997, the South Brisbane Centre became an independent commercial unit of WorkCover and was released by the board to provide services to customers other than WorkCover referrals. The centre later became known as 'ProActive Injury Management'. This business and the building that housed it was sold on 1 April 1999.
17	That the government workers' compensation scheme remain the sole insurer and regulator of Workers' Compensation in Queensland at least until the Fund is brought into balance.	✓	s335 of the WCQA 1996, then later s385 of the WCRA 2003. Refer Appendix 4 recommendations from the National Competition Policy (NCP) Review.
18	That damages claims should be determined within the existing court system and not by a dedicated court system.	✓	No action required.
19	That the review of workers' compensation in 1999-2000 recommended in this report should include in its terms of reference consideration of National Competition Policy; the return of the Fund to balance by that time; the possibility of establishing a fully competitive market for workers' compensation insurance in Queensland.	✓	Please refer to Appendix 4.
20	That Queensland replace the current premium rating system including the merit bonus system with a premium setting system based more on direct experience.	✓	The EBR premium setting system commenced on 1 July 1997.
21	That common law claims costs be taken into account in the experience based premium rating system.	✓	Common law claims costs have been incorporated into the calculations of premium payable under the EBR system.

22	That in establishing any new premium rating scheme consideration should be given to its effects on small business and adjustments made appropriately to ensure fairness and equity.	✓	Experience based premium rating has been adjusted using a sizing factor to maintain fair and equitable premiums for small business together with stability of premium charges.
23	That self insurance be allowed for employers that meet conservative prudential standards with respect to size, financial stability, capability, viability and audit.	✓	ss98 to 131 of the WCQA 1996 then later s68 to 104 of the WCRA 2003. There are currently 25 self-insurers regulated by Q-COMP.
24	That in implementing self insurance the WorkCover board ensure adequate solvency of self insurers which may necessitate a reserve or secondary Fund.	✓	s113 of the WCQ Act 2003, then later s84 of the WCRA 2003. Regulation of self-insurers is now the responsibility of Q-COMP.
25	That the <i>WorkCover Queensland Act</i> make provision for group self insurance for suitable employers which might include the Australian Sugar Milling Council and the Local Government Association of Queensland on the same prudential requirements as for large self insurers.	✓	s102 of the WCQA 1996, then later s72 of the WCRA 2003.
26	That self rating insurance including group self rating for workers' compensation be allowed subject to strict regulation regarding eligibility.	✓	ss72 to 97 of the WCQA 1996. Self-rating was later removed.
27	That the new <i>Workers' Compensation Act</i> define a worker, who is covered by the Act, as one who is subject to the PAYE scheme and Group Tax deductions are paid or payable by the employer at the time when the injury occurred or as one who is otherwise eligible and has sought to take out personal injury insurance cover with WorkCover Queensland. Eligible workers would include sub-contractors, working directors and self-employed persons.	✓	ss12 to 28 of the WCQA 1996. Different governments have made changes to the definition of worker over the years, including deletion of the PAYE tax requirement to refer to just contract of service on 1 July 2000, and the introduction of the results test to clarify the definition on 1 July 2003. The current definition of worker is detailed in ss11 to 26 of the WCRA 2003.
28	That WorkCover Queensland as a matter of priority undertake the investigation and consultation to address premium avoidance which is occurring.	✓	Penalties for uninsured and underinsured employers were introduced in the WCQA 1996, then later continued in the WCRA 2003. WorkCover has a significant employer compliance focus to address this issue.
29	That common law claims for damages be permitted only where the work related impairment level exceeds 15% WRI.	✗	Following the announcement by the Member for Gladstone that she would not support the introduction of any impairment threshold for common law access, or extension of the current irrevocable election provisions, the government made a decision not to progress with those recommendations.
30	That injured workers with greater than 15% WRI be required to make an irrevocable election within 42 days of being offered a statutory lump sum compensation, between accepting either a statutory lump sum payment or pursuing damages at common law, once their injury is 'stable and stationary'.	✗	The irrevocable election remained at 20% WRI as introduced on 1 January 1996.
31	That Courts be required to award costs on the scale of costs applicable had the proceedings been commenced in a lower Court which would have had jurisdiction to make the award.	✓	s327 of the WCQA 1996. s318 of the WCRA 2003 contains the same provision.
32	That gratuitous care awards (i.e. <i>Griffiths v Kerkemeyer</i> ) be abolished as a head of damage at common law, and that a statutory lump sum payment of a maximum of \$150,000 (in lieu of gratuitous care awards in common law) be available for more seriously injured workers who are in need of ongoing special care assistance on the following basis: <ul style="list-style-type: none"> <li>the lump sum payment to be made when the statutory claim is finalised;</li> <li>that it be available to workers with an impairment level exceeding 15%WRI; and</li> <li>that WorkCover Queensland be able to pay a reasonable lump sum in this regard and give consideration to such matters being determined by the Medical Assessment Tribunals against a graduated scale within the Regulation.</li> </ul>	✓	s315 of the WCQA 1996 was enacted to prevent the court from awarding damages for gratuitous care. s211 of the WCQA 1996 provides for the payment of a lump sum under the statutory claims system for gratuitous care. The scale of awards and the scale for assessing dependency can be found in the regulations. These sections later became s308 and s193 respectively in the WCRA 2003. The <i>Karanfilov</i> case allowed a gratuitous care damages payment, showing the section was not effective. This was clarified in the 1 July 2005 amendments.

33	That to avoid ambit claims for future economic loss/ impairment of income earning capacity, that the Courts not award damages unless the injured worker can show at least a 51% likelihood (i.e. on the balance of probabilities) of the worker actually sustaining that future loss.	✓	s317 of the WCQA 1996. This section was repealed on 1 July 2001 and the scheme reverted to the principles established at common law.
34	That interest on general damages (i.e. for pain and suffering and loss or impairment of the enjoyment of the amenities of life) be abolished.	✓	s318 of the WCQA 1996. This section was repealed on 1 July 2001.
35	That awards of interest on other heads of damage be limited to circumstances where there has been unreasonable delay on the part of WorkCover and/ or where WorkCover has failed to accept an offer of settlement made by the worker which is later found to have been reasonable (i.e. by the worker receiving an award for damages greater than the offer made).	✓	s318 of the WCQA 1996. This section was later repealed on 1 July 2001.
36	That consideration be given to making employers directly responsible for exemplary or punitive damages.	✓	s319 of the WCQA 1996. s328 of the WCRA 2003 contains this provision amended to apply to self-insurers.
37	That a definition of contributory negligence should be defined in a special provision of the new Act.	✓	s312 to 314 of the WCQA 1996, then later s307 of the WCRA 2003.
38	That caps not be placed on any damages.	✓	No action required.
39	That if investigations of either a statutory or common law claim lead to a successful fraud prosecution, the injured worker would be precluded from the payment of common law damages.	✓	s486 of the WCQA 1996 extinguishes the worker's right to access common law where fraud has been proven. This later became s537 of the WCRA 2003.
40	That the changes outlined in this Report to facilitate pre-proceeding processes be adopted.	✓	ss279 to 291 of the WCQA 1996, then later s273 to 293 of the WCRA 2003.
41	That the Courts must give consideration to the steps that have been taken by the injured worker to mitigate their damages.	✓	s275 of the WCQA 1996. ss267 to 269 outline this area in greater detail.
42	That the onus of proving that all reasonable steps have been taken to mitigate damages should be placed on the injured worker.	✓	s275 of the WCQA 1996, then later s267 of the WCRA 2003.
43	That the defendant be allowed to give the plaintiff notice suggesting relevant mitigating actions.	✓	s275 of the WCQA 1996, then later s267 of the WCRA 2003.
44	That a requirement be placed on Courts to document their findings to ensure greater accountability and improved grounds for appeal against decisions.	✓	The requirements for assessment and calculation of damages will cause courts to better document their findings.
45	That the definition of injury be clarified so that injury means 'personal injury arising out of or in the course of employment where the employment is the major significant factor causing injury'.	✓	s34 of the WCQA 1996. This was later amended in to require employment to be 'the major contributing factor', then later amended again to read 'a significant contributing factor', which is what it was originally as per previous amendments.
46	That amendments occur in relation to stress claim provisions as outlined in this Report.	✓	s34 of the WCQA 1996. The 'reasonable person test' s34(4)(b) was later removed from this Act.
47	That the threshold and deductible for industrial deafness claims be increased to 5%.	✓	ss151 to 153 of the WCQA 1996. ss124 to 126 of the WCRA 2003 detail the same provisions.

48	That journey claims between the worker's home and work not be covered by workers' compensation.	✗	<p>Following the announcement by the Member for Gladstone that she would not support the abolition of journey claims, the government made a decision not to progress with those recommendations. Provisions relating to journey claims have been tightened with the exclusion of 'at home' injuries by defining the boundary of the journey as the boundary of the land on which the home is situated. Further exclusions have been included if the injury resulted from the worker:</p> <ul style="list-style-type: none"> <li>• voluntarily subjecting themselves to risk</li> <li>• contravening the <i>Traffic Act 1949</i> s16, if the contravention is the major significant factor causing the injury</li> <li>• contravenes the Criminal Code s328A</li> <li>• has a substantial delay, interruption, or deviation from the journey.</li> </ul>
49	That recess claims which occur away from the workplace be excluded except where the employer has specifically sanctioned the recess activity.	✗	<p>Following the announcement of the Member for Gladstone that she would not support the abolition of recess claims, the Government made a decision not to progress these recommendations. s36 of the WCQA 1996 then later s34 of the WCRA 2003 contain some limitations regarding recess claims.</p>
50	That the changes to Form 4 outlined in this Report be adopted.	✓	<p>The form 4 injured worker application form was redrafted incorporating Kennedy's recommendations, and is now entitled <i>Application for Compensation</i>.</p>
51	That the WorkCover Act must continue to support and include provision for careful control of the workers' compensation scheme outlined in this Report.	✓	<p>All control mechanisms from the <i>Workers' Compensation Act 1990</i> were retained in the WCQA 1996 (i.e. primary care status for registered medical practitioners only, finalisation by lump sum, controls on private hospitalisation costs, control over medical and allied fees).</p>
52	That any statutory workers' compensation claim, accepted for payment by WorkCover Queensland, which is lodged more than 28 days after the entitlement to compensation arises be paid from the date of lodgment only, unless WorkCover Queensland decides otherwise on the basis that special circumstances exist.	✓	<p>s158 of the WCQA 1996, then later s131 of the WCRA 2003.</p>
53	That any statutory workers' compensation application which is lodged more than six months after the entitlement to compensation arises be regarded as invalid. It will be necessary in drafting legislation to include a discretionary power for WorkCover Queensland to allow genuine applications on the basis that special circumstances of a medical nature, determined by a Medical Assessment Tribunal, exist.	✓	<p>s158 of the WCQA 1996, then later s131 of the WCRA 2003. These sections also contain exceptions for special circumstances.</p>
54	That WorkCover Queensland provide the option for employers to insure against the four day excess.	✓	<p>s71 of the WCQA 1996, then later s67 of the WCRA 2003. Employers may elect to insure against the excess period by paying 8.5% of their premium or \$10 whichever is the greatest.</p>
55	That the prescribed amount of excess payable by employers be changed to the first week of entitlement to weekly compensation which better reflects the original intent of the 4 day excess but overcomes some of the difficulties in relation to part time or casual employment.	✓	<p>ss69 and 70 of the WCQA 1996, then later ss65 and 66 of the WCRA 2003. Information is also available in the regulations.</p>

56	That specific provisions be made regarding the calculation of the excess for part time or casual employees to clarify that the amount the employer must pay for the excess is the part of the worker's entitlement that relates to the amount payable to the worker under the contract of service with that employer.	✓	s69 and 70 of the WCQA 1996, then later s65 and 66 of the WCRA 2003.
57	That WorkCover Queensland change the administrative calculation in instances where an employee works under flexible working arrangements so that it reflects the same basis the employee is being paid by the employer ie. eg. 9 day fortnight or 19 day month, Rostered Day Off (RDO) considered as a working day.	✓	This has been incorporated in the statutory claims procedures.
58	That the principles embodied in the draft legislation being prepared under the supervision of Mr Ian Callinan, QC, with the assistance of Mr Ross McConaghy, LLB, be accepted as an essential part of the reform package proposed by this Inquiry and that the ongoing legal team continue to be involved in drafting the final legislation with the Parliamentary Counsel.	✓	Both Mr Ross McConaghy and Mr Ian Callinan QC worked with the Parliamentary Counsel to finalise drafting of the common law provisions.
59	That a new Act of Parliament, to be known as WCQA 1996, be drawn up and passed to replace the <i>Workers' Compensation Act of 1990</i> and amendments and that the new Act be effective from 1 July, 1996 unless where otherwise stated.	✓	In view of the breach of Fundamental Legislative Principles caused by retrospective legislation, and the preparatory work required to draft the legislation and train staff etc, it was determined that the WCQA 1996 would commence from 1 February 1997.
60	That only normal weekly earnings (NWE) be used as the basis for weekly benefits	✓	ss174 to 179 of the WCQA 1996, then later ss150 to 155 of the WCRA 2003.
61	That no person on workers' compensation benefits be paid more than they would have received had they not been injured and were still at work.	✓	ss171 and 172 of the WCQA 1996, then later ss147 and 148 of the WCRA 2003.
62	That the method for calculating Normal Weekly Earnings for purposes of calculating workers' compensation benefits be revised to include: <ul style="list-style-type: none"> <li>• a requirement for overtime, penalties/allowances to be of a regular nature and required by the employer rather than the present situation where all such payments are taken into account in calculating AWE; and</li> <li>• a specific provision related to seasonal workers. Where there is reference under an award or industrial agreement to seasonal variations in employment conditions, the calculation of AWE should reflect the appropriate season under the award or industrial agreement as if the worker were at work and the injury had not occurred. This will mean that the level of Workers' Compensation benefits for any one worker may change over time to reflect the seasonal changes defined.</li> </ul>	✓	s133 of the WCQA 1996, then later s106 of the WCRA 2003. The calculation of normal weekly earnings is described in the regulations.
63	That the nexus between weekly benefits, statutory lump sums and the statutory maximum compensation be broken.	✗	In view of the non-progression of recommendations relating to common law threshold, increases to the statutory benefit structure including the breaking of the nexus between weekly payments were not progressed. Increases to the statutory benefit structure were later progressed as part of the January 2008 legislative changes.

64	That the maximum statutory lump sum benefit be raised to \$130,000.	✗	In view of the non-progression of recommendations relating to common law, increases to the statutory benefit structure including the increase of the statutory maximum to \$130 000 were not progressed. The statutory maximum was later increased to \$150 000 as part of the <i>WorkCover Queensland Amendment Act 2000</i> . The current statutory maximum is \$273 055 and changes ever year in line with CPI.
65	That the additional lump sum of up to \$100,000 be available to all those injured (i.e. not just spinal cord and brain damage) where there is a work related impairment of 50% or greater.	✓	s210 of the WCQA 1996, then later s192 of the WCRA 2003.
66	That the structure of weekly benefits set out in this Report be adopted.	✓	ss174 to 179 of the WCQA 1996, then later ss150 to 155 of the WCRA 2003.
67	That, where practicable, all employers have in place WPR Policies and Procedures, and that WPR Guidelines be available for small employers to assist in this regard.	✓	ss243 to 246 of the WCQA 1996. Originally, there was a 12 month lead in time for requirements relating to workplace rehabilitation. ss226 to 229 of the WCRA 2003 contains similar obligations for employers with regard to rehabilitation.
68	That employers with > 30 employees be required to appoint a Rehabilitation Co-ordinator.	✓	s243 of the WCQA 1996, then later s226 of the WCRA 2003.
69	That Rehabilitation Co-ordinators attend a Workplace Rehabilitation Course provided by or approved by the WorkCover Queensland within 6 months of appointment. (12 months lead time on introduction of legislation and thereafter 6 months).	✓	s245 of the WCQA 1996, then later s226 of the WCRA 2003.
70	That employers review WPR Policy and Procedures every three years for audit purposes.	✓	s244 of the WCQA 1996, then later s227 of the WCRA 2003.
71	That employers provide rehabilitation/return to work opportunities on individual claims where the employer's business allows for such opportunities. Penalties to exist where such opportunities are not provided on request by WorkCover Queensland.	✓	s245 to 246 of the WCQA 1996, then later s228 and 229 of the WCRA 2003.
72	That benefits be made contingent upon participation in a rehabilitation program including workplace based rehabilitation programs.	✓	s247 to 249 of the WCQA 1996, then later s230 to 232 of the WCRA 2003.
73	That the proposals to amalgamate the Division of Workplace Health & Safety and the Workers' Compensation board be rejected.	✓	No action required.
74	That the Minister give consideration to commissioning Mr Des Knight, FCA, to work with the Division Head, Mr John Hodges, to implement necessary changes as a matter of urgency.	✓	Review undertaken.
75	That the key legal professional bodies review their Codes of Conduct to establish a more professional standard for advertising for workers' compensation cases.	✓	The Law Society undertook a general review in relation to all advertising. Legislation was enacted recently which restricts the types of advertising lawyers can do.
76	That the Minister establish an Implementation Task Force to ensure that the recommendations of this Report are implemented forthwith.	✓	An implementation task force was established with cabinet's approval on 22 July 1996 following consultation with Mr Kennedy as to composition.
77	That a Legislative Working Group be established with Mr Ian Callinan, QC, as Chair.	✓	A legislative working group was established headed by Mr Ian Callinan QC to overview the draft legislation.
78	That the Task Force consider any outstanding issues of policy and administration arising in submissions not resolvable within the scope of this Inquiry.	✓	Detailed papers were presented to the task force during the 14 meetings held. These papers sought clarification on policy matters not addressed by Kennedy.
79	That copies of all submissions be provided to the new authority for workers' compensation to be an important resource material.	✓	Copies of all submissions to the Kennedy inquiry were available to the task force.

## Appendix 2—Excerpt from the Kennedy Review of EBR

The following is an excerpt from Mr Kennedy's March 2000 review of EBR recommendations made by WorkCover Queensland and industry.

Key	
✓	recommendation implemented
✗	recommendation not implemented

Recommendation		Narration	
1	<p><b>Premium rate volatility</b></p> <p>A component of the EBR formula contains a fixed dollar amount used to determine a company's sizing factor. The sizing factor determines the percentage of recent claims experience used in calculating a company's premium rate. Some of WorkCover's customers have extreme premium rate volatility due to the level of claims experience included in their premium rate calculation.</p> <p>That the sizing moderating factor be retained at \$250,000 and be subject to annual review.</p>	✓	<p>The sizing moderating factor was retained at \$250,000. This is reviewed on a regular basis.</p>
2	<p><b>Common Law estimates versus actuals</b></p> <p>There is inequity for policy holders in the use of estimated common law settlement amounts in their premium calculation when the actual common law settlement is greater or less than the estimate. Currently if a common law claim settles for an amount different to the estimate, there is no adjustment (either up or down) of the premium paid.</p> <p>It is recommended to implement retrospective premium adjustment when the common law settlement amount differs from claim estimates used in premium calculation.</p>	✓	<p>Implemented and the credibility of EBR enhanced.</p>
3	<p><b>Impact of common law claims on small business</b></p> <p>The sizing factors in the EBR formula protect small business from premium rate volatility as a result of large common law claims.</p> <p>In order to help small businesses make a return to their original premium rate in a time period more consistent with medium and large sized businesses, it was proposed at the industry forum that small businesses revert to the industry rate in the fifth year after the last common law claim has impacted on a policyholder's premium rate.</p> <p>It was recommended that a premium rate cap of twice the industry rate be introduced to the scheme and that the minimum sizing factor remain the same.</p>	✓	<p>Capping was set at twice the industry rate (2 x IR). It has since been modified to provide incentive for employers who remain capped at 2 x IR for 2 or more consecutive years.</p> <p>The minimum sizing factor remains at 2%.</p>

Recommendation		Narration	
4	<p><b>Premium rate stability for new business</b></p> <p>The base industry rate is the premium rate applied to new policy holders for the first 18 months. WorkCover then applies a limited EBR calculation based on statutory claims only. This, in some instances, causes significant rate volatility prior to movement to the full EBR calculation after 42 months.</p> <p>To improve premium rate stability for new businesses, it is recommended that no change be implemented and the use of industry rates only to calculate premiums for up to 42 months before the policy holder goes to full EBR.</p>	✓	No other premium stability measures have been introduced at an employer level.
5	<p><b>Effect on provisional premium if common law drops out</b></p> <p>Adjustment of provisional premium for any anticipated reduction in common law claim experience.</p>	✓	Proposal was considered not a significant issue. Common law has been retained in the EBR calculation.
6	<p><b>Review the calculation of the F factors</b></p> <p>QCCI proposed that WorkCover review the fundamentals of how the F factors were calculated, with a view to stabilising premium.</p>	✓	No change to F factor methodology was introduced. F factors values continue to be calculated each year to reflect up to date fund experience.
7	<p><b>Remedial action for policy holders impacted by common law</b></p> <p>The QCCI sought a review of the parameters within the EBR system with a view to refunding premium to those customers with common law claims affecting the 1998/99 premium. QCCI estimated this refund may need to be as high as \$100 million.</p>	✓	No retrospective adjustment was applied.
8	<p><b>Claim Management issues</b></p> <p>The significance of effective claim management strategies by employers to reduce the impact of their workers' compensation costs.</p>	N/A	This matter was not within the scope of Kennedy's brief.

## Appendix 3—National Competition Policy Review 2000

The following recommendations were made by the National Competition Policy Review 2000:

1. That the requirement contained in the *WorkCover Queensland Act 1996* that employers must maintain accident insurance for their workers be retained.
2. That the public monopoly for the Queensland workers' compensation system be retained.
3. WorkCover Queensland retain its exclusive claims management role but the issue of claims management be reviewed in three years time.
4. That Q-COMP become a completely separate entity from WorkCover Queensland to ensure independent regulation of the market.
5. That the self-insurance licensing criteria be retained for a further three years at which time the full impact of self-insurance on the Queensland workers' compensation market can be better assessed.
6. That self-insurance licensing criteria be reviewed in three years time.
7. That while maintaining the requirement for self-insurers to maintain workplace health and safety standards, Q-COMP in conjunction with the Division of Workplace Health and Safety, examine alternative methods of achieving workplace health and safety outcomes.
8. That subsection 119(4) of the *WorkCover Queensland Act 1996* be amended to allow self-insurers to outsource their claims management function.
9. That the amount WorkCover Queensland is liable for to pay in the event of private hospitalisation continues to be prescribed by regulation and that this amount be regularly reviewed to ensure it is consistent with current costs.
10. That the capping of benefit levels for medical, allied health, and rehabilitation costs be retained.
11. That Q-COMP and DETIR review the conditions that can be applied to the use of allied health professional and rehabilitation service providers, including the matter of the referral requirement.
12. That the requirement for workplace rehabilitation courses to be approved by Q-COMP continue.
13. That the requirement for employers to participate in effective return to work programs be retained but that a review be undertaken by Q-COMP, with industry input, to examine alternative methods of achieving improved return-to-work outcomes for workers and employers.
14. That the price setting mechanism for premiums and associated costs be retained.

Source: <http://www.dir.qld.gov.au/publications/ncpwcreview.pdf> (Please note that these recommendations have been directly extracted from the text of this report and numbered for convenience).

## Appendix 4—Legislative amendments

### 1 July 1997

#### **WorkCover Queensland Act 1996**

Source: WorkCover Queensland Bill 1996 Explanatory Notes

- Implemented the majority of recommendations made in the Kennedy Report (refer to Appendix 1).
- Change in the definition of ‘worker’ from anybody working under a contract of service, regardless of their taxpaying status to a PAYE taxpayer.
- Changes to the definition of ‘injury’ from requiring employment to be a ‘significant contributing factor’ causing the injury to be ‘the major contributing factor’ to the injury.
- Provision for large employers to self-insure their workers’ compensation risk.
- Creation of WorkCover Queensland as a commercially oriented, statutory authority to administer workers’ compensation in Queensland.
- Introduced measures to streamline and improve the capacity to manage statutory and common law claims.
- Strengthened employer and worker obligations in a number of areas.
- Ensured employers and workers participate in effective rehabilitation and return to work programs.
- Provided modern and more flexible insurance arrangements for Queensland employers.
- Provided a framework for more effective and efficient management of workers’ compensation.

### 1 July 1999

#### **WorkCover Queensland Amendment Act 1999**

Source: WorkCover Queensland Amendment Bill 1999 Explanatory Notes

- Changes to the definition of ‘injury’.
- Employment must now be ‘a significant contributing factor’ rather than ‘the major significant factor’.
- Removal of the former definition of injury to allow for a work related aggravation of a pre-existing injury.
- For industrial deafness claims the requirement for further diminution of hearing loss was reduced from 5% to 1%.
- The ‘reasonable person’ and ‘ordinary susceptibility’ tests for stress claims were removed.
- Changes to the definition of worker to include all workers under a ‘contract of service’ and remove the PAYE restriction.
- Change to journey claim provisions.
- The previous requirement to use the ‘shortest convenient route’ was removed.
- The requirement excluding compensation for those who voluntarily subject themselves to risk or injury was also removed.
- The time to apply for compensation was amended to allow compensation to be backdated for a period of 28 days.
- WorkCover Queensland or a self-insurer must decide a claim in three months, not six months.
- Coverage for seafarers for voyages outside Queensland.
- Provided a more independent and transparent review process with emphasis on direct contact with applicants, including establishment of a review unit and WorkCover Queensland review council to monitor the review unit and medical assessment tribunal (MAT).
- Strengthened self-insurance licence conditions and criteria by introducing occupational health and safety performance standards, increasing the number of workers required from 500 to 2000, and requiring self-insurers to assume liability for claims tails.
- Removed option of self-rating for employers.

## 1 July 2000

### **WorkCover Queensland and Other Acts Amendment Act 2000**

Source: WorkCover Queensland and Other Acts Amendment Bill 2000 Explanatory Notes

- Changed the definition of 'worker' from a PAYE taxpayer to a person working under a contract of services, regardless of their taxpaying status.
- The Act also specified certain categories of persons declared to be workers, such as sharefarmers, pieceworkers, or outworkers.
- Allowed the WorkCover Queensland Board to accept applications for self-insurance from group employers who were licensed as self-insurers or who had lodged an application for self-insurance prior to 3 March 1999, in circumstances where as a result of restructuring, they do not meet the criteria for the number of workers as amended 3 March 1999.
- Reduced level of the unconditional bank guarantee for self-insurers who elected a five year reassessment of their outstanding liability.
- Ensured payment to an injured worker on the day of injury.
- Improved the procedural efficiency of MATs.
- Excluded reserves from the determination of solvency for WorkCover Queensland.

## 1 July 2001

### **WorkCover Queensland Amendment Act 2001**

Source: WorkCover Queensland Amendment Bill 2001 Explanatory Notes

- Increased statutory benefits for workers to ensure that seriously injured workers and their dependants receive greater compensation, including:
  - increased the lump sum benefit payable to dependants on the death of a worker to \$250 000
  - increased the maximum statutory benefit able to be received by an injured worker by 24% to \$150 000
  - increased the amount available for dependants of those fatally injured
  - improved criteria to access statutory gratuitous care.
- Gave courts the discretion to make awards for costs, interest on damages, and loss of consortium.
- Improved common law pre-proceedings processes and administrative arrangements to ensure that claims are resolved earlier.
- Repealed contributory negligence and mitigating loss provisions introduced by previous coalition government.
- Maintained full common law access including the 20% threshold test, while reducing legal costs for those less seriously injured.

## 1 July 2003

### **Workers' Compensation and Rehabilitation Act 2003**

Source: Workers' Compensation and Rehabilitation Bill 2003 Explanatory Notes

- Established the workers' compensation regulatory authority, Q-COMP, as a statutory body to regulate the workers' compensation scheme in Queensland.
- Maintained WorkCover Queensland as a fully commercial statutory body and retains all other provisions from the WorkCover Queensland Act 1996.
- Amended the definition of 'worker' to provide greater certainty by applying a 'results test' in addition to the existing legislative criteria for determining whether a person is a worker. Under the 'results test' a person will be considered a 'worker' unless it can be shown that the person meets all the elements of the 'results test'. This change particularly benefited stakeholders in the building and construction industry, and other industries with high levels of contracting arrangements.

## 1 July 2005

### **Workers' Compensation and Rehabilitation and Other Acts Amendment Bill**

Source: Workers' Compensation and Rehabilitation and Other Acts Amendment Bill Explanatory Notes 2005

- Enhanced worker's compensation benefits for injured workers and their families.
- Protected the WorkCover Queensland scheme from the impacts of employers exiting to the commonwealth self-insurance scheme.
- Gave effect to aspects of the National Standard for Construction Work and the National Standard for Plant as declared by the National Occupational Health and Safety Commission (NOHSC).
- Recommended greater flexibility in the self-insurance licensing and the workplace rehabilitation requirements and a greater focus on return to work in the legislation.
- Increased benefits for injured workers and their families building on the scheme's focus of providing enhanced compensation to more seriously injured workers and to minimise immediate financial hardship on families if a worker is fatally injured as a result of a work-related injury.
- Protected the WorkCover Queensland scheme from the impacts of employers exiting to the Commonwealth self-insurance scheme.

## 1 November 2005

### **Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005**

Source: Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005 Explanatory Notes

- Improved worker benefits for injured workers by extending the step down in benefits from 39 to 52 weeks. Compensation to dependent family members on the death of a worker increased and new benefits for totally dependent spouses and non-dependent family members introduced.
- Introduced an additional lump sum, payable to workers with latent onset injuries that are terminal and, for latent onset injuries, changed the date of injury from the actual date of exposure to the date the injury is diagnosed.
- Introduced more flexible self-insurance arrangements, new requirements relating to workplace rehabilitation and rehabilitation and return to work coordinators and introduced concept of 'high risk industries' (from 1 January 2006).
- Introduced new provisions relating to composition and procedural requirements of MATs.

## 1 April 2006

### **Workers' Compensation and Rehabilitation Amendment Act Explanatory Notes 2006**

Source: Workers' Compensation and Rehabilitation Amendment Act Explanatory Notes 2006

- Reaffirmed the independent and non-adversarial nature of MAT proceedings by clarifying that an insurer, employer, or any other person, other than the worker or their representative, has no entitlement to be present or heard before the MAT.
- Gave all parties an opportunity to comment on written material submitted to a MAT before a MAT at a hearing can consider the material.

## 1 May 2006

### **Workplace Health and Safety and Other Acts Amendment Act Explanatory Notes**

Source: Workplace Health and Safety and Other Acts Amendment Act Explanatory Notes

- Transferred employment protection for workers who have sustained a work-related injury or disease for a period of twelve months from the *Industrial Relations Act 1999* to the *Workers' Compensation and Rehabilitation Act 2003*.
- Amended the *Industrial Relations Act and Other Legislation Amendment Act 2007* in relation to issuing of renewal of licence to a single or group employer and appointment of authorised persons.

## 1 January 2008

### ***Workers' Compensation and Rehabilitation and Other Acts Amendment Bill 2007***

Source: Workers' Compensation and Rehabilitation and Other Acts Amendment Bill 2007 Explanatory notes

Key amendments covered in the *Workers' Compensation and Rehabilitation and Other Acts Amendment Bill 2007* passed 31 October 2007 to come into effect 1 January 2008:

- Reduced the decision making timeframes for all statutory claims to 20 days
- Removed the one and two year step down of benefits entitlements and increased the benefit to 75% of normal weekly earnings and 70% of QOTE for the period from 26 weeks to five years
- Increased the maximum additional lump sum compensation to \$218 000
- Increased access to additional lump sum compensation by reducing the threshold level of work-related impairment from 50% to 30%
- Clarified that death benefits paid will be reduced by the amount paid at statutory level (weekly compensation, redemption payments, or lump sum compensation)
- Clarified that workers who have received compensation for a latent onset injury prior to their death are not entitled to death benefits (workers with latent onset injuries are entitled to additional lump sum benefits)
- Tied claims for damages for injuries over a period of time to a single date by clarifying that the date of injury is the date on which the worker first consulted a doctor about the injury
- Allowed insurers to recover a reasonable proportion of reasonable costs incurred where a worker has created a legal liability independent of the Act
- Amended procedures in relation to assessing additional injuries
- Amended sections in relation to an insurer's charge on damages for compensation.

## 25 November 2008

### ***Workplace Health and Safety and Other Legislation Amendment Act 2008***

Source: Workplace Health and Safety and Other Legislation Amendment Bill 2008 Explanatory Notes

- Introduced new entitlements for dependants of sufferers of work-related latent onset disease, such as mesothelioma.
- Introduced new lump sum entitlement of 15% of the maximum death benefit for dependants of a worker who had already received a payment of lump sum compensation or damages for a latent onset injury that is in a terminal condition.
- Introduced new allowance for reasonable funeral expenses of 2% of the maximum death benefit available to dependants.
- Allowed insurers to pay the two new lump sum entitlements at the time the statutory lump sum payment to worker is paid.

## 1 December 2008

### ***Transport and Other Legislation Amendment Act 2008***

Source: Transport and Other Legislation Amendment Bill 2008 Explanatory Notes

- Allowed the lodgement of injured workers' applications and certain other forms by telephone.
- Allowed the worker to provide verbal notice to an insurer on returning to work.

## 3 November 2009

### ***Health and Other Legislation Amendment Act 2009***

Source: Health and Other Legislation Amendment Bill 2009 Explanatory Notes

- Enabled nurse practitioners to issue workers' compensation medical certificates for minor injuries at patients' initial attendance in accordance with a protocol.

## 1 July 2010

### **Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2010**

Source: Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2010 Explanatory Notes

- Harmonised common law claims brought under the Workers' Compensation and Rehabilitation Act 2003 in terms of liability (standard of care), contributory negligence and caps on general damages and damages for economic loss
- Addressed the increased difficulty faced by employers in resisting claims for damages as a result of the Queensland Court of Appeal decision in *Bourk v Power Serve Pty Ltd & Anor* [2008] QCA 225.
- Increased obligations on third parties to participate meaningfully in pre-court processes.
- Allowed a court to award costs against plaintiffs whose claims are dismissed
- Increased the amount of employer excess to 100 percent of Queensland Ordinary Time Earnings or one week's compensation, whichever is the lesser.
- Removed option for employers to insure against their excess
- Allowed payments to parents of workers aged under 21, if the worker dies and the parents live interstate.
- Allowed self-insurers to take on a higher statutory reinsurance excess in order to lower reinsurance premium.

## 4 April 2011

### **Electrical Safety and Other Legislation Amendment Act 2011**

Electrical Safety and Other Legislation Amendment Bill 2011 Explanatory Notes

- Clarified the appeals provisions for workers' compensation appeals to the Industrial Court of Queensland by clarifying the operation of the 21 day time limit for appeals and ensuring that the appeals from a decision of the Queensland Industrial Review Court are limited to errors of law or excess or want of jurisdiction.

## 6 June 2011

### **Work Health and Safety Amendment Act 2011**

Work Health and Safety Amendment Bill 2011 Explanatory Notes

- Implemented a key structural review recommendation to mandate a review of the workers' compensation scheme every five years
- Allowed for a worker to accrue leave while off work on workers' compensation
- Authorised WorkCover Queensland to release project-specific injury data to principal contractors in charge of construction projects to monitor project safety performance.
- Introduced requirements for construction contractors who are employers to provide evidence of their workers' compensation insurance to the principal contractor in charge of the project.

## Appendix 5—Productivity report

During 2003–2004, the Productivity Commission investigated the possibility of a national workers' compensation scheme and occupational health and safety frameworks. Its Interim Report contained unfounded recommendations, which were strongly contested by WorkCover Queensland. The final report, sent to the Federal Government during March, made similar recommendations, however was not supported by the government. The following pages contain the executive summary of WorkCover Queensland's response to the Productivity Commission's Interim Report.

WorkCover Queensland is not a profit-driven insurer. Put simply, its philosophy is the maintenance of low premiums for employers coupled with the best possible benefits for injured workers. WorkCover Queensland has achieved this goal while maintaining a fully-funded scheme.

In 2002-2003 there was a 13% average increase in workers' compensation premiums across Australia (AON Risk Management Survey, 2002-2003). WorkCover Queensland is proud not to have contributed in any way to this increase. Queensland employers continue to enjoy an average premium rate that is the lowest of any Australian state, having reduced from 2.145% in 1998 to a rate of 1.55%. This reduction in the average premium rate has been maintained since 2000. At the same time, statutory claim and common law component benefits to injured workers increased. For example, statutory maximum limits have been increased, injury management initiatives have improved rehabilitation for common law claimants, and single injury assessments have been introduced to simplify access to common law.

When comparing the Queensland average premium rate to other states which include the 9% superannuation guarantee levy in definition of wages, the WorkCover Queensland average net premium rate equates to 1.44%. While the Comcare advertised average rate of 1.13% is lower than the Queensland rate, this rate does not include any heavy industry or the Australian Defence Forces. Before any changes are proposed to the current workers' compensation systems in Australia, the Federal Government and the Productivity Commission should seriously consider those aspects of the Queensland system which have proven effective and workable. WorkCover Queensland has successfully achieved a balance between the needs of injured workers and employers, while still maintaining an extremely viable insurance business. This fully-funded, commercially focussed State Government organisation should be preserved at all costs.

At this stage, each Australian workers' compensation scheme is at a significantly different stage of evolution, ranging from fully managed in-house (Queensland) to a hybrid, internally underwritten and externally claim managed scheme (New South Wales, South Australia and Victoria), to a fully privately underwritten scheme (Tasmania, the Northern Territory and Western Australia). It is difficult to see how a national framework can be suggested until each of these jurisdictions are able to independently maintain a fully-funded 'level playing field' (McKinsey Review of NSW Workers' Compensation scheme in Interim Report, page 241). When all jurisdictions are operating on a level playing field, fairness and equity between states becomes less of an issue.

Overall, WorkCover Queensland supports the need for consistency and a number of the Commission's recommendations in relation to fundamentals of a workers' compensation scheme. Despite this support, we are strongly opposed to many of the recommendations made, in particular the recommendation to remove common law access, recommendations regarding cross-subsidisation, and recommendations for the Commonwealth development of a national workers' compensation scheme to operate in conjunction with existing state and territory schemes. WorkCover Queensland believes that the introduction of this additional layer of regulation is flawed, does not balance the needs of all stakeholders, will substantially impact on the viability of the Queensland scheme, and is not in the best interests of the public. The problems faced by workers' compensation schemes would be far better overcome by sharing 'best practice' and experience of existing schemes through a formalised version of the current Heads of Workers' Compensation Authorities (HWCA).

There is no doubting the need for consistency in workers' compensation fundamentals such as definition of worker, definition of wages base, definition of injury, premium assessment, statutory

entitlements, access to common law and rights of review. Implementing a framework to provide this consistency will be difficult, so expertise and best practice from existing schemes must be utilised in order to balance benefits for injured workers and employers alike.

The benefits of consistency across jurisdictions include but are not limited to:

- common understanding by all external service providers (medical, allied health, legal) and other stakeholders
- greater efficiencies and lower costs for employers
- certainty and a level playing field for injured workers.

It would appear that the benefits of consistency apply equally to Occupational Health and Safety (OHS) issues. However, OHS is not within the domain of WorkCover Queensland and hence we leave such comments to the appropriate OHS authorities.

There are several aspects of the recommendations that WorkCover Queensland supports, based on the information provided. These include consistency of access and coverage, injury management, statutory benefits structures and dispute resolution. When more in-depth information is provided, WorkCover Queensland believes these recommendations should be subject to further analysis and discussion.

Pleasingly, WorkCover Queensland is already demonstrating success in these areas. Best practice initiatives such as Experience Based Rating (EBR) premium calculation methods, definition of worker results test, new interstate worker legislation and return to work programs have already earned praise from key stakeholder groups. WorkCover Queensland has worked hard over the past six years to achieve success and expertise in these areas. During this time, we have consistently maintained full funding, stable premiums and stable benefits. We would not wish to see our hard-earned industry leader status eroded through implementation of some of the Commission's proposed recommendations.

Notwithstanding our support for consistency across jurisdictions, WorkCover Queensland believes that many of the recommendations made in the report are flawed. Far too many unanswered questions remain for us to have any confidence that implementation of the current recommendations will result in workable and acceptable outcomes for all stakeholders.

The recommendations for self-insurance fail to:

- quantify the relevant thresholds of entry and exit at steps one, two and three
- define the medium and long-term periods
- identify the relevant prudential, claims management, OHS and other requirements at each step.

The introduction of the proposed model will only add an unnecessary layer of regulation to insurance schemes that need to be as close to their customers as possible to be successful.

It would appear that the fundamental premise of the recommendations is that of employer 'choice', with little regard to the injured worker, who would appear to be subject to the whim of employer decisions. While choice is admirable and important in promoting competition, surely the most important aspect of a good workers' compensation scheme is balancing the needs of injured workers and employers. WorkCover Queensland believes that the Commission's suggested scheme is not viable in its current form, and that 'choices' made by organisations opting into the scheme may not necessarily be for the long-term benefit of their injured workers.

WorkCover Queensland can appreciate the desire of larger national companies to self-insure (nominally step one in the Interim Report), and through the Queensland scheme such companies already have the ability to do so. However, a substantial exit of employers from any scheme will detrimentally impact the financial viability of the scheme they have left.

Since 1998, WorkCover Queensland has seen the exit of 24 employers to self-insurance. These employers represented 15% of premium and claims costs. Downsizing and centralisation of regional office functions has been necessary to cope with the financial impact of lost economies of scale. If it

had not been for this loss of business, WorkCover Queensland would have been able to deliver even lower premium rates for employers and more improved service delivery and benefits for injured workers. To further erode the premium pool potentially jeopardises the medium and long-term viability of the scheme. Despite assertions to the contrary by the Commission, this is made abundantly clear in the actuarial advice of Taylor Fry.

The first area affected by any further loss of business to self-insurance is likely to be WorkCover Queensland's regional presence. WorkCover Queensland maintains regional presence in 24 locations throughout Queensland – something unsurpassed by any other workers' compensation jurisdiction in Australia. WorkCover Queensland continues to enhance the local knowledge acquired in regional areas. We have fostered a regional workforce of skilled people in the areas of premium, claims and case management. Our regional success has been strongly endorsed by external customer surveys of injured workers and employers in remote areas.

There is a limit to the amount of fixed infrastructure that can be eliminated from a commercially driven insurance operation when a significant amount of business exits. WorkCover Queensland's infrastructure provides services in regional offices as well as the Brisbane metropolitan area, and cannot be easily further downsized. Economies of scale and scope will also be lost with a smaller premium pool. The end result will inevitably be increased claims management costs given that WorkCover Queensland is not prepared to diminish its service levels to injured workers and employers. These increased costs will ultimately need to be passed on to employers through premium increases.

There is a perception that private external claims managers deliver a better service than a publicly funded insurer. This is incongruous with the profit-driven requirement of a private company compared to the cost recovery basis of a public entity. The results of the National Return to Work Survey (Campbells, 2003, page 44) prove that WorkCover Queensland is on par with or better than those states that outsource claims management and underwriting.

WorkCover Queensland believes that its service provision on claims management to injured workers is unsurpassed and accordingly has no intention of outsourcing this fundamental and successful component of its business.

The extension to this is the issue of privatised insurance underwriting. In his 1997 Review of New South Wales WorkCover Queensland Scheme, Grellman mentioned concerns that privatisation would encourage cross-subsidisation with other insurance products, resulting in "reckless competition among licensed insurers" (Grellman, 1997, page 69). There is a continued risk that private underwriters will utilise workers' compensation insurance on a loss leader basis to acquire other, more viable business from their customers. WorkCover Queensland prides itself on providing only workers' compensation insurance to its customers. Our people are therefore free to concentrate on providing the best possible service to employers and injured workers, instead of on pushing other product lines.

The Interim Report also recommends that there should be no cross-subsidisation of premiums. This is an unrealistic goal. There will always be some element of cross-subsidisation in any risk-based underwritten insurance scheme. Cross-subsidisation exists in order to protect businesses, particularly small and medium enterprises (SME's) from the effect on their business of unusually high cost claims. While larger businesses pay premiums that closely reflect their claims costs, WorkCover Queensland protects small businesses from massive premium fluctuations through the use of a sizing factor. There are various arguments for and against cross-subsidisation, which exists in most public utilities. For example, to post a letter from Cairns to Kalgoorlie costs 50 cents, the same as the cost of a letter posted from one side of Brisbane to the other. Philosophically, WorkCover Queensland believes there is a social responsibility to ensure that workers' compensation is managed so that costs and benefits are borne equitably by all participating parties.

All schemes provide weekly statutory benefit entitlements. In some jurisdictions, these benefits continue for the balance of a working life. Over the years, respective governments in Queensland have maintained the provision of common law access for severely injured workers where the provision of statutory benefits is inadequate to compensate the needs of long-term, seriously injured workers.

WorkCover Queensland continues to maintain the view that genuinely, seriously injured workers should retain the right to common law benefits. If access to common law was removed from workers' compensation environments, it would not preclude those genuinely injured workers from seeking similar common law access through public liability forums. This would cause cost shifting and potential increases to already massive public liability premiums.

WorkCover Queensland agrees that consistency is a major problem for Australia's current workers' compensation system. The Interim Report successfully identifies this problem, but fails to evaluate possible solutions before making recommendations. WorkCover Queensland believes that the problem of consistency across jurisdictions could be addressed through the formation of a small, professional committee to address such issues. The nucleus of this committee could emanate from the Heads of Workers' Compensation Authorities (HWCA) or the Workplace Relations Ministers. Ideally, legislation could be enacted to formalise HWCA, which currently has neither the formal mandate nor the power to make recommendations and implement. Clearly this committee would need fair representation from each state, and should not be driven solely out of the New South Wales or Victorian arenas.

In summary, WorkCover Queensland reiterates that there are far too many unknowns and unanswered questions to rely on many of the recommendations in this Interim Report, in particular unilateral movement to a national workers' compensation framework. WorkCover Queensland would defy any other Australian workers' compensation jurisdiction, private underwriter or claims manager to categorically and quantifiably demonstrate delivery of better service to all of its stakeholders by way of premium and claims management – all while maintaining a level of solvency that satisfies all prudent financial requirements.

Source: available at <http://www.pc.gov.au/inquiry/workerscomp/subs/subir205.pdf>

## Appendix 6—Robin Stewart-Crompton Review

I commenced this review on 1 June 2010 under the terms of reference approved by the Minister. The review involved a high level of consultation.

A reference group of stakeholders was established, chaired by an associate secretary of DJAG. It included representatives of unions, employer bodies, self-insurers, the Law Society, the Australian Lawyers Alliance and senior officials from Q-COMP, WCQ and WHSQ. The reference group met fortnightly and was consulted about the review's progress and the report's possible content and recommendations.

I consulted many interested groups and persons (see Appendix). They included unions, employers and their representative associations, legal professional bodies and legal practitioners, the Q-COMP board, the WCQ chair, the MAT chair, the Workplace Health and Safety board, the Australian Orthopaedic Association president, allied health professional representatives, key staff of Q-COMP, WCQ and WHSQ, MAIC and Q-Super, other Queensland safety regulators, WorkSafe Victoria and actuaries used by WCQ and Q-COMP. The assistance of those who were consulted is gratefully acknowledged. They were not required to make formal written submissions, but many provided useful documents and drew attention to materials that assisted the review. To promote candid discussion, all discussions were confidential. Accordingly, the persons who were consulted are not quoted in the report.

The report was prepared with the benefit of those consultations and discussions. I also considered relevant materials, including legislation, Parliamentary debates, jurisprudence, previous reviews of workers' compensation law and practice, monographs, articles, and statistical reports. The report contains fifty-one recommendations, with associated findings. The findings and conclusions draw from what was put to me, but represent my views. Most of the recommendations are for administrative action. Some would, if accepted, need legislative implementation. All are meant to contribute to ongoing improvement in the prevention of work-related harm and to fair, effective and efficient responses to it. A high performing workers' compensation scheme is important to achieving that goal.

In formulating my recommendations, I considered that, in line with modern regulatory practice, taking non-statutory action should be considered before legislative change. Some recommendations build on or complement action that has been taken or is foreshadowed. I recommended legislation where it was the only or best way to achieve a proposed objective I also identified some areas where, although strong opinions were firmly held, there was not enough evidence for making sound policy judgements. In those cases, I have proposed that information and data be gathered to allow evidence-based decisions.

I consider that, overall, the recommendations will facilitate the work of the foreshadowed 2012 whole of scheme review.

Finally, I express my appreciation for the considerable assistance given to me by many people, but particularly the reference group and Ms Trinh Le from WHSQ who worked tirelessly with me throughout the consultation and the information gathering stages.

## Robin Stewart-Compton Review Recommendations

Key	
✓	Recommendation implemented
x	Recommendation not implemented
DJAG	Department of Justice and Attorney General
ESO	Electrical Safety Office
IRC	Industrial Relations Commission
MAIC	Motor Accident Insurance Commission
MAT	Medical Assessment Tribunal
Minister	The Minister for Industrial Relations and Attorney General
Q-COMP	The Workers Compensation Regulatory Authority
TOR	Term of Reference
WCRA	The Workers Compensation and Rehabilitation Act 2003
WCR	Regulation The Workers Compensation and Rehabilitation Regulation 2003
WCQ	WorkCover Queensland
WHSA	The Workplace Health and Safety Act 1995
WHSQ	Workplace Health and Safety Queensland
ch	chapter
sch	schedule
s	section
ss	sections
r	regulations

### Note:

Only recommendations involving WorkCover have been listed.

The recommendations were endorsed by Parliament in June 2011 and as such some time frames have not been met.

Recommendation		Narration	
1.1	There should be an overarching cross-agency strategy for more effectively preventing work related harm and responding to its consequences, which should be developed for ministerial endorsement. WHSQ should be responsible for managing the development of the strategy.	✓	Completed. Strategy endorsed by agencies.
1.2	The overall goal of the strategy would be to strengthen the interaction between WHSQ, the ESO, Q-COMP and WCQ so that the benefits of better co-ordinating their activities relating to preventing work-related harm, and responding to its consequences are realised.	✓	Completed. Strategy endorsed by agencies.
1.3	The interaction should include: a) sharing data and other information that is relevant to the various responsibilities of the WHSQ, the ESO, Q-COMP and WCQ; and, b) where appropriate, co-ordinating their activities, including the development and distribution of guidance material, with priority given to any activities of mutual benefit to some or all of the participants.	✓	Completed. Strategy endorsed by agencies.
1.4	Under the strategy, WHSQ, the ESO, Q-COMP and WCQ, should be required: a) when each engages in strategic or business planning, to take account of the goal of the overarching strategy and of any common or complementary goals, policies and programs of the participants; and	✓	Completed. Strategy endorsed by agencies.

Recommendation		Narration	
	b) to identify and, where appropriate, undertake joint activities that would assist in achieving the goal of the overarching strategy.		
1.5	The strategy should be outcome based. Activities and results would be reported against the strategy's key result areas in existing periodic reporting to the Minister.	✓	Completed. Strategy endorsed by agencies.
1.9	Easy to understand guidance about the respective roles, powers and functions of Q-COMP, WCQ, WHSQ, the ESO and DJAG and how they interact should be prepared jointly and made available on their websites. Such guidance should include links to more detailed material which may be found on those web sites.	✓	Partially completed – ongoing.
1.10	Instead of WCQ providing funding to Q-COMP which includes funding for WHSQ, WCQ should provide funding separately to Q-COMP and to WHSQ. Q-COMP should continue to provide, under s.479 of the WCRA, amounts collected from self-insurers to WHSQ.	✓	Administrative arrangements completed. Legislative amendment will ensure future payments by WorkCover are made under similar terms as Q-COMP.
2.1	At least until the government's response to the 2012 review is known, WCQ and Q-COMP should agree, for example, through a MOU, on a program of twice-yearly joint presentations to all interested stakeholders reporting on: a) the financial status of the fund, including an actuarial report; and b) performance in all areas that are critical for the scheme's ongoing viability and the achievement of its objectives.	✓	Completed – ongoing. An actuarial presentation was delivered to stakeholders in November 2010 and May 2011. The next presentation has been scheduled for November 2011.
2.2	The data so presented and related material information should be available as soon as reasonably possible for interested persons.	✓	Completed. Ongoing, refer above.
2.15	Progress in giving effect to all matters agreed upon by the government after considering this report should be reported to the Minister in the quarterly reports by each of the implementing bodies and included in their Annual Reports.	✓	Completed.
3.1	WCQ's service charter should be amended as soon as reasonably possible to commit WCQ to ongoing effective engagement with employers about claims management, including advising them at specified times of a claim's progress and what action is being taken.	✓	WorkCover is currently reviewing its customer service charter.
3.2	WCQ should continue to hold interactive seminars with interested stakeholders relating to common law claims management at least annually and should consider similar seminars in relation to statutory claims management (and return to work and rehabilitation).	✓	WorkCover is conducting regular stakeholder forums. The last forum was conducted in August 2011. The plan is to have the forums ongoing, every six months.
3.3	WCQ should, in consultation with stakeholders, prepare easy to understand guides for employers and injured workers about what to expect in the claims process, how they can facilitate a claim's fair and effective progress, their review and appeal rights and how to obtain more information, if necessary. Similar material should be available for other persons who may be involved at a workplace (such as managers, supervisors, RRTW coordinators). WHSQ should contribute information on good WHS practice as to injured workers who are at work under an RTW arrangement. At the same time, Q-COMP should, in consultation with self-insurers and other interested stakeholders, prepare similar material.	✓	Ongoing.

Recommendation		Narration	
3.4	WCQ should review whether claims management would be improved by appointing medical experts to whom WCQ staff managing claims could have ready access for advice on medical aspects of claims. Such experts might also be available for professional discussions with medical practitioners dealing with workers under the scheme.	✓	Completed. WorkCover has implemented the Medical Advisory Panel. Senior specialists have been appointed to this panel and are available to advise WorkCover claims staff. Feedback from the medical community has been very positive.
3.5	WCQ should give further consideration to whether any action needs to be taken to strengthen the knowledge and understanding of centralised claims managers of regional circumstances that may be material to dealing with a claim or to provide them with better access to such knowledge and relevant information.	✓	Completed. New customer service model implemented.
3.6	WCQ should, in consultation with stakeholders, review its policies and practices about the investigation of applications for compensation to consider whether WCQ's capacity to investigate is used appropriately and to make any necessary adjustments.	✓	Completed. In addition, the new customer relationship model will help to address concerns raised by employers.
3.8	WCQ should consider whether sufficient use is being made of legal panel members or other skilled practitioners to assist in the training of WCQ staff who are engaged in claims management to improve the skills and knowledge of less experienced staff.	✓	Completed.
3.9	Where WCQ is considering taking action to increase the premium of a poor performing employer, WCQ should be able to consider accepting a voluntary undertaking about improved performance by the employer and to agree not to impose the increase if the agreed improvements occur.	✓	Administrative component completed. IPaM has been implemented. Legislative provisions have been drafted for consideration by government.
5.2	There should as soon as possible be stronger enforcement of: a) the period within which a notice of claim is given under s.133 of the WCRA; b) an employer's obligations as to an injured worker's return to work and rehabilitation; c) a worker's obligations as to return to work and rehabilitation.	✓	WorkCover return to work outcomes have improved from 90.7% to 93.6% last year. Analysis is currently being conducted of employers who lodge claims late for targeting.
5.4	WCQ and Q-COMP should develop their respective RTW and rehabilitation policies and programs in consultation with each other to make them complementary and to facilitate better understanding of the potential demand for RRTW services when claimants cease to be within the scope of WCQ's programs. Such policies and programs should be reviewed in consultation at least annually.	✓	Ongoing.
5.7	WHSQ, Q-COMP and WCQ should 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, including by: a) promoting the value of WHSOs and RRTW coordinators to employers in securing better prevention of work-related harm as well as better return to work and rehabilitation outcomes; b) supporting training that recognises and strengthens the complementary roles of WHSOs and RRTW coordinators; c) making relevant information and advice readily available to WHSOs and RRTW coordinators; d) monitoring the use and effectiveness of WHSOs and RRTW coordinators to improve the support available to them.	✓	A cross agency business process group has prepared an initial project plan and identified this area as the priority. The group will progress the issue and update the Minister on a quarterly basis.

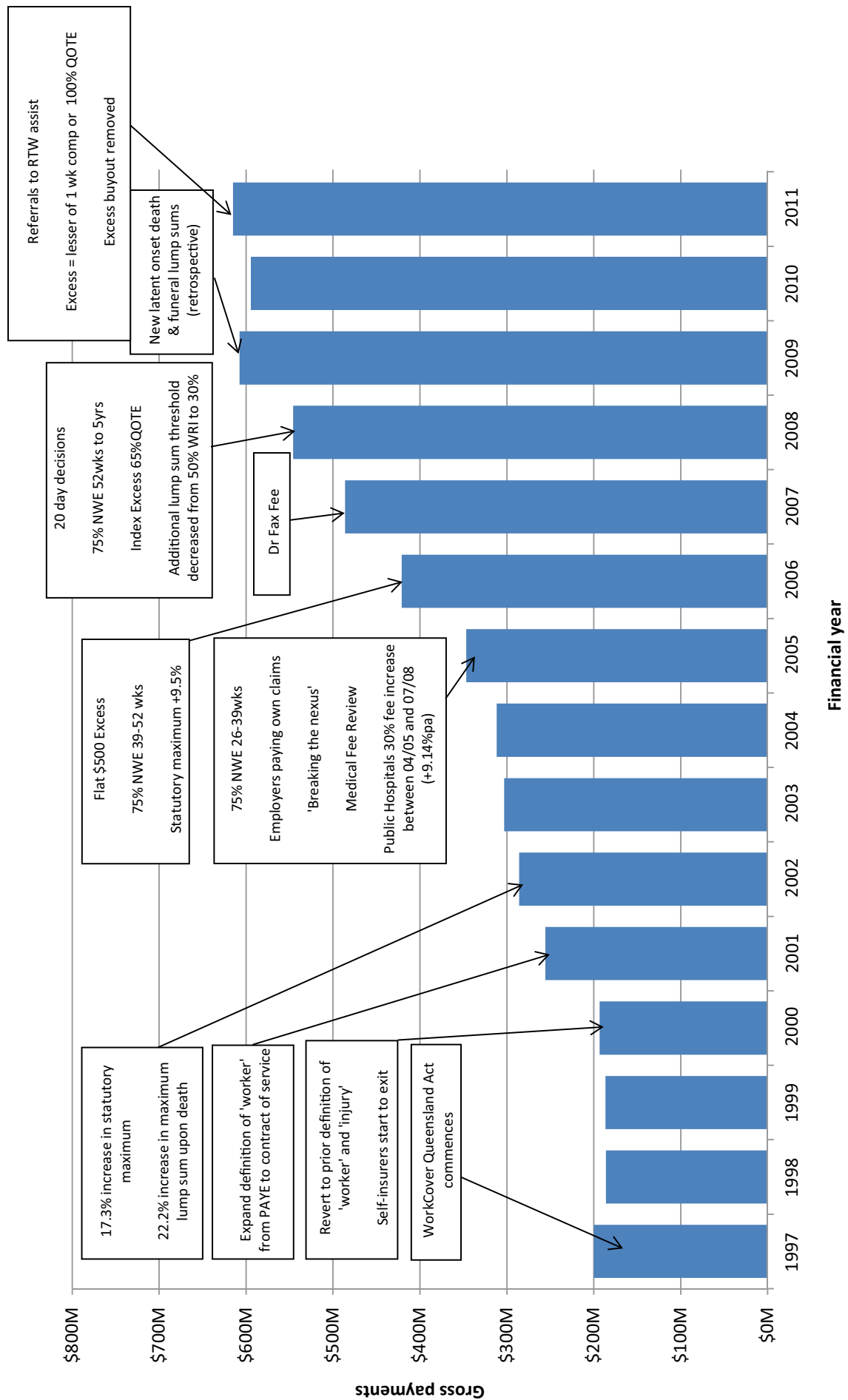


# Statutory claims

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>Weekly Compensation</b>	102,430	85,810	77,670	93,400	132,400	139,700	140,200	141,700	156,600	180,200	203,900	234,627	241,528	230,831	237,761
<b>Medical/Rehabilitation</b>	38,640	39,270	37,280	42,300	60,400	69,500	71,800	73,600	79,400	100,600	123,500	134,222	157,017	143,914	155,441
<b>Lump sum</b>	37,390	35,630	39,730	37,510	46,600	60,700	74,400	78,600	88,700	99,400	114,800	133,649	144,757	156,811	153,851
<b>Hospital</b>	8,480	8,090	8,100	8,500	11,200	10,500	11,000	10,600	12,300	30,600	33,500	36,438	59,090	58,259	63,120
<i>Travel</i>		2,060	2,200	2,600	4,300	4,600	4,200	4,000	4,100	5,400	6,400	6,514	6,597	5,724	6,065
<i>Legal</i>		870	1,400	1,400	700	500	1,000	2,700	5,000	4,100	3,300	2,306	724	939	464
<i>Funeral</i>		210	220	240	300	400	500	500	592	723	732	908	646	623	539
<b>Other</b>	3,690	3,140	3,820	4,240	5,300	5,500	5,700	7,200	9,692	10,223	10,432	9,728	7,967	7,286	7,068
<b>Recoveries (expenses)</b>		-1,940										-2,804	-2,992	-2,239	-2,413
	190,630	170,000	166,600	185,950	255,900	285,900	303,100	311,700	346,692	421,023	486,132	545,860	607,367	594,862	614,828
<b>Recoveries (revenue)</b>					-23,500	-21,000	-23,700	-21,900	-20,505	-26,957	-22,092	-25,301	-35,401	-38,635	-42,909
<b>TOTAL</b>	190,630	170,000	166,600	185,950	232,400	264,900	279,400	289,800	326,187	394,066	464,040	520,559	571,966	556,227	571,919

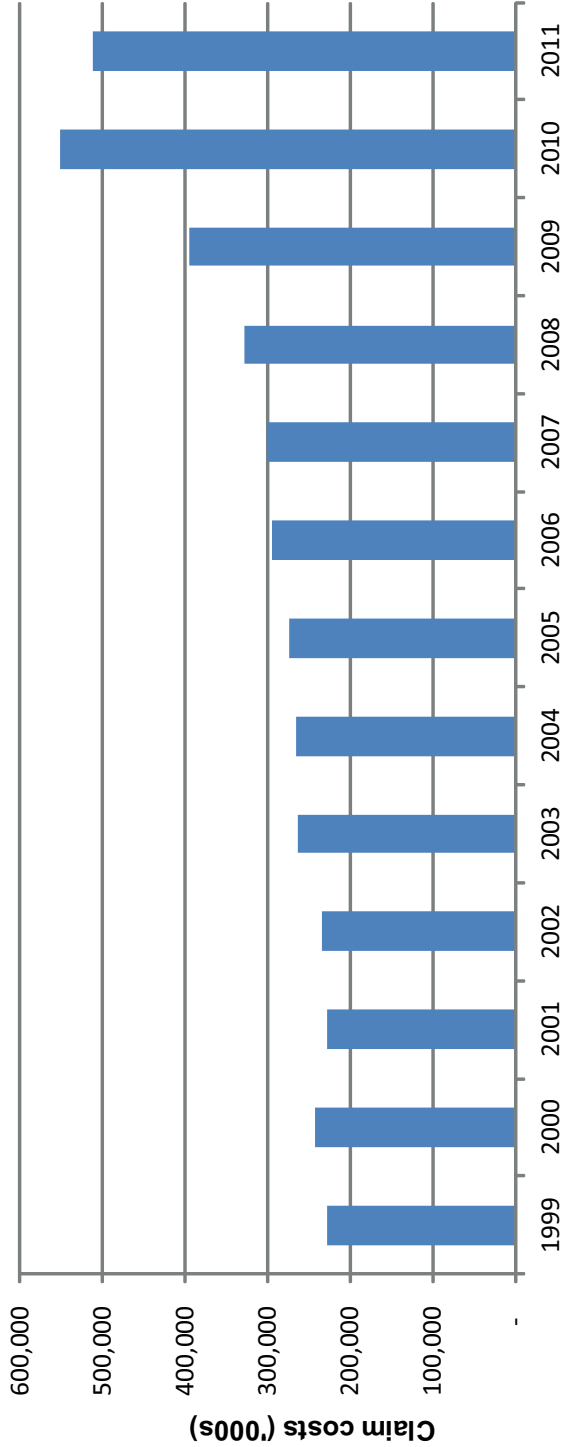


# Statutory claims payment history

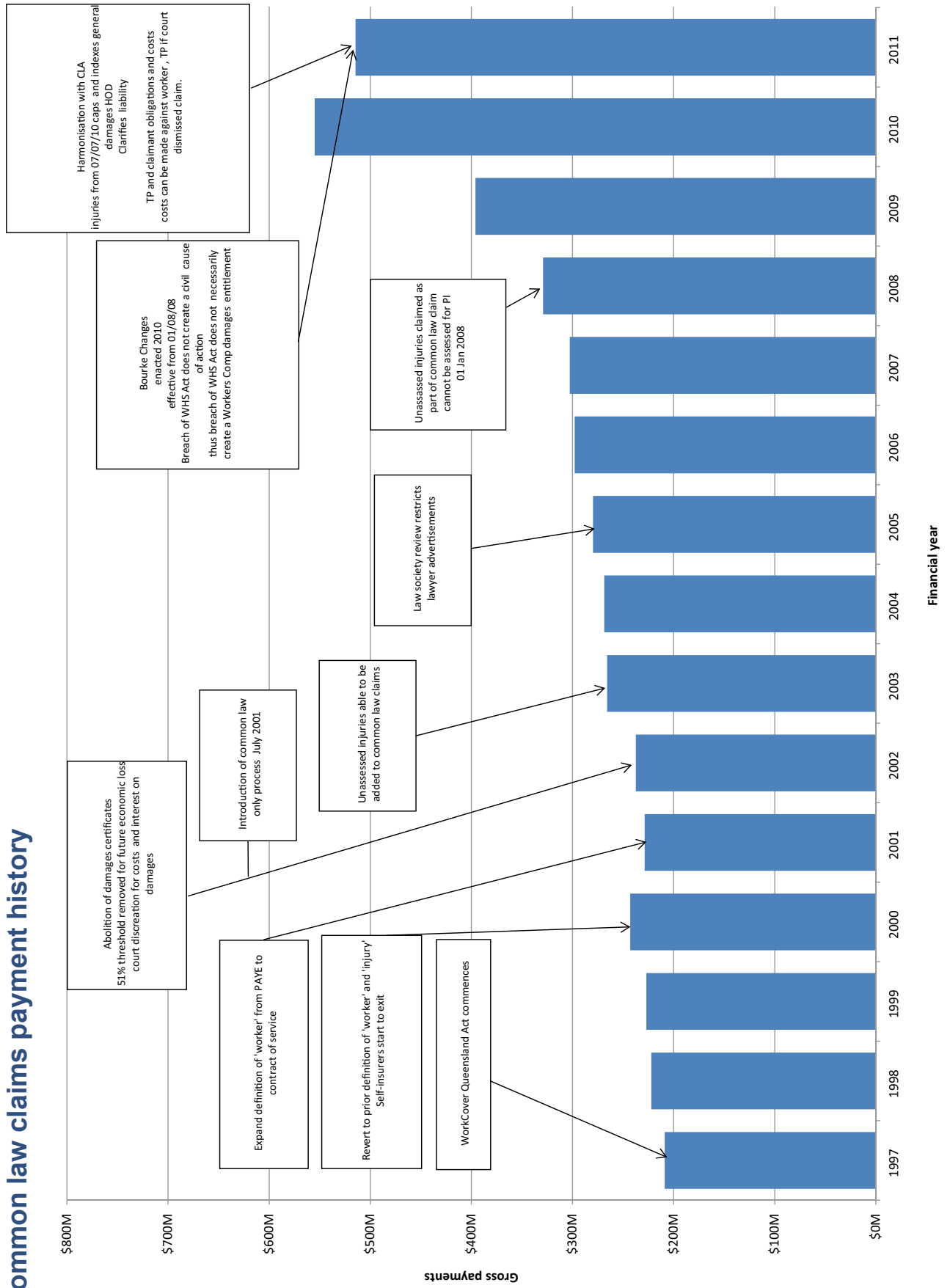


## Common law claims

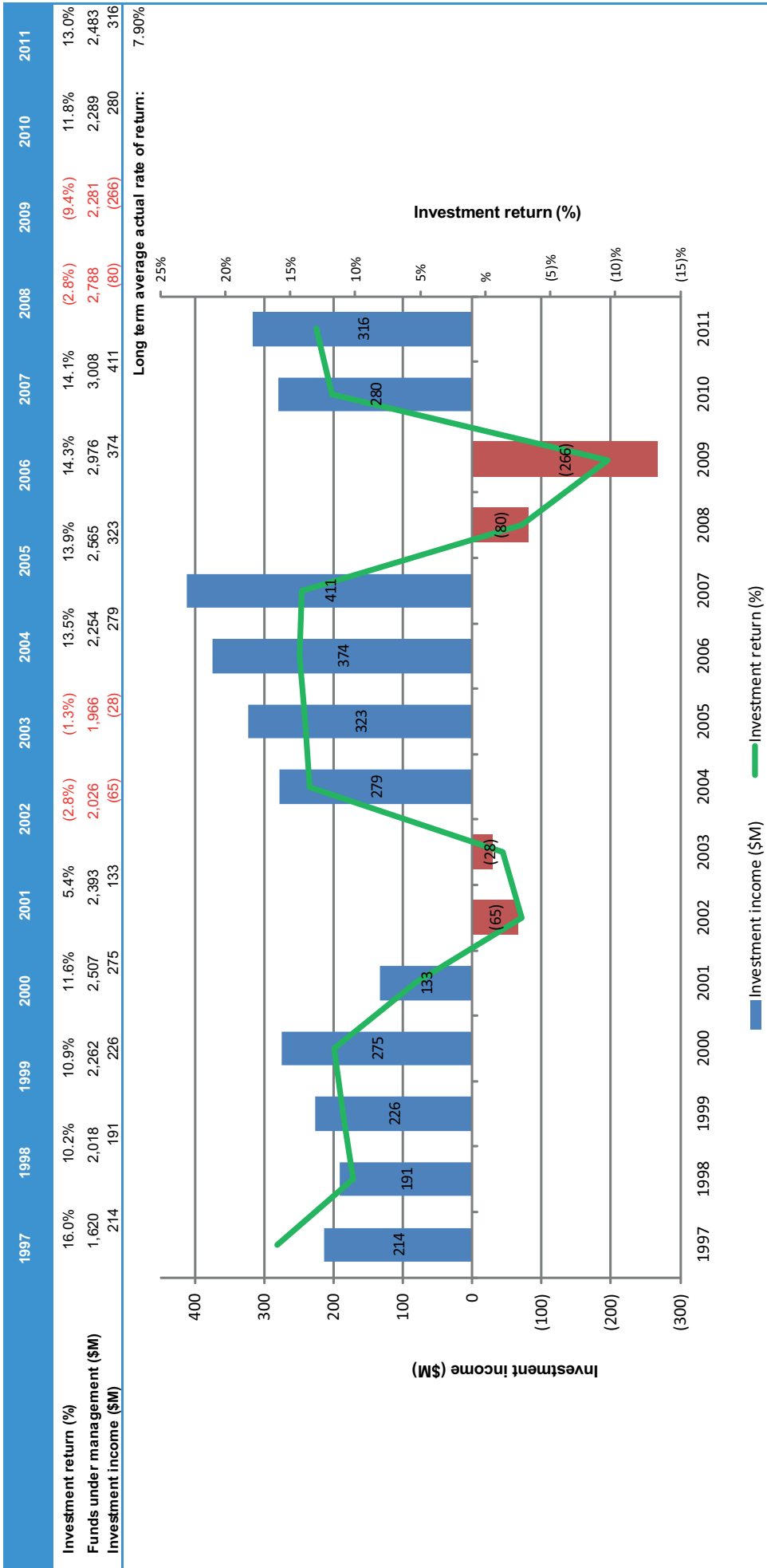
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Settlement out of court	154,800	176,200	181,200	196,300	222,600	225,500	236,600	260,900	268,600	294,800	352,500	506,600	460,200
Settlement in court	14,300	12,400	4,200	2,100	1,600	1,800	1,800	700	1,500	1,700	1,700	2,400	3,900
Legal costs for defendants	22,500	22,500	20,700	26,300	34,600	35,500	34,700	30,700	23,200	24,400	30,900	33,700	36,100
Outlays for defendants	10,300	9,000	8,400	6,400	3,300	3,300	3,300	3,600	6,900	6,700	9,100	9,700	11,400
Legal costs for plaintiffs	14,500	13,000	8,100	3,800	2,700	2,000	2,800	1,800	2,000	1,200	1,500	2,100	2,700
Outlays for plaintiffs	10,700	9,900	6,100	2,400	1,000	500	500	200	600	300	200	300	200
<b>Common law payments</b>	<b>227,100</b>	<b>243,000</b>	<b>228,700</b>	<b>237,300</b>	<b>265,800</b>	<b>268,600</b>	<b>279,700</b>	<b>297,900</b>	<b>302,800</b>	<b>329,100</b>	<b>395,900</b>	<b>554,800</b>	<b>514,500</b>
Common Law Recoveries			(100)	(4,200)	(2,600)	(2,400)	(5,300)	(3,400)	(1,700)	(1,900)	(607)	(2,338)	(1,937)
<b>TOTAL</b>	<b>227,100</b>	<b>243,000</b>	<b>228,600</b>	<b>233,100</b>	<b>263,200</b>	<b>266,200</b>	<b>274,400</b>	<b>294,500</b>	<b>301,100</b>	<b>327,200</b>	<b>395,293</b>	<b>552,462</b>	<b>512,563</b>



# Common law claims payment history

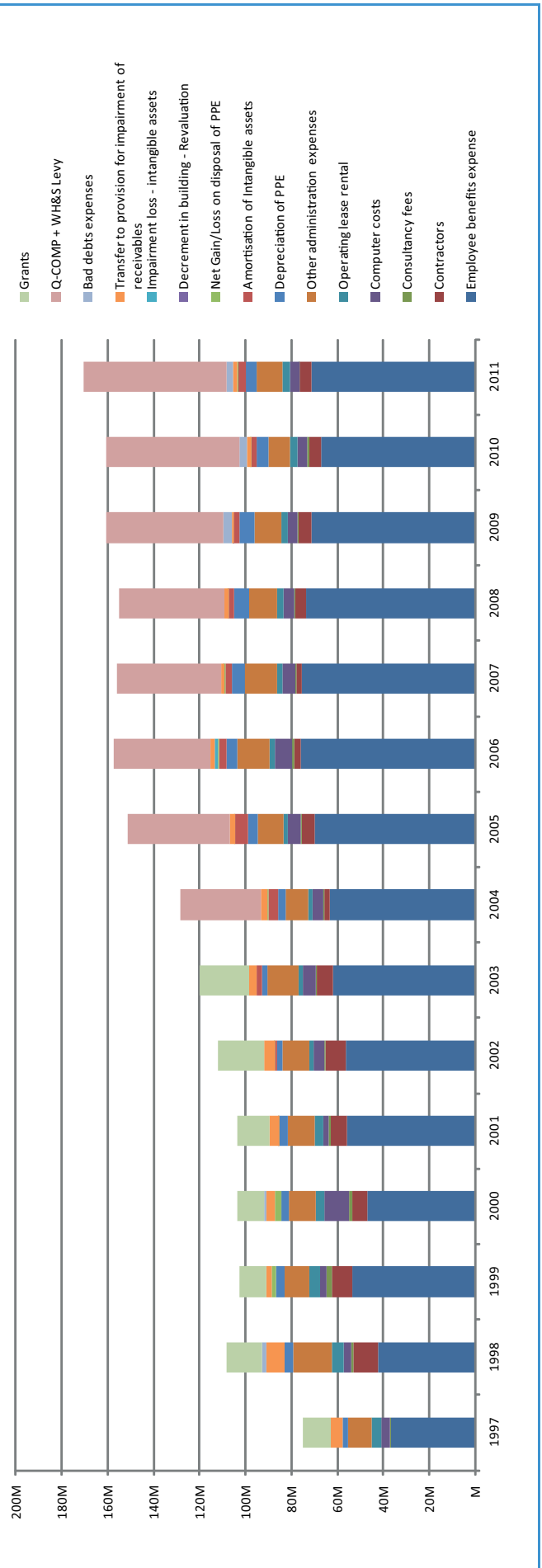


# Investments



# Underwriting expenses

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>UNDERWRITING EXPENSES</b>															
Employee benefits expense	36,546	42,386	53,337	46,707	55,982	56,254	61,739	63,220	69,919	76,151	75,297	73,613	71,195	67,210	71,256
Contractors	10,677	9,195	6,973	6,975	6,973	8,874	7,022	2,508	5,582	2,790	2,596	4,867	5,603	4,744	5,042
Consultancy fees	461	915	2,350	1,059	607	389	552	436	563	771	498	141	444	1,149	59
Computer costs	3,689	3,250	2,563	10,705	2,570	4,698	5,683	4,589	5,476	7,393	5,258	4,801	4,414	4,439	4,099
Operating lease rental	4,180	4,945	4,696	4,138	3,861	1,796	2,042	1,762	1,799	2,308	2,422	2,998	2,854	3,076	3,591
Other administration expenses	10,445	17,144	11,005	11,315	11,631	11,957	13,231	9,816	11,279	14,091	13,969	12,014	11,360	9,560	11,023
Depreciation of PPE	2,117	3,736	3,727	3,591	3,439	2,233	2,625	3,391	4,113	4,797	5,695	6,458	6,880	4,942	4,652
Amortisation of intangible assets					122	770	2,159	4,267	5,677	3,311	3,060	2,272	2,189	2,530	3,304
Net Gain/Loss on disposal of PPE		1,789	196	2,536	186	196	(25)	566	165	288	403	59	(32)	23	496
Decrement in building - Revaluation					4,282	4,503	3,381	2,778	2,249	1,486	28	1,782	769	1,487	1,706
Impairment loss - intangible assets	5,193	8,000	2,428	4,000	4,282	4,503	3,381	2,778	2,249	1,486	28	1,782	769	1,487	1,706
Transfer to provision for impairment of receivables		1,531		832						1,935	1,300		3,902	3,531	3,116
Bad debts expenses															
<b>Underwriting expenses (excl. Q-COMP)</b>	<b>62,631</b>	<b>92,584</b>	<b>91,090</b>	<b>91,858</b>	<b>89,653</b>	<b>91,670</b>	<b>98,409</b>	<b>93,333</b>	<b>106,822</b>	<b>115,301</b>	<b>110,526</b>	<b>109,005</b>	<b>109,637</b>	<b>102,691</b>	<b>108,344</b>
Grants	12,327	15,766	11,742	11,809	14,040	20,334	21,334	35,000	44,445	42,098	45,528	45,972	51,118	57,825	62,254
Q-COMP + WH&S Levy															
<b>Total underwriting expenses</b>	<b>74,958</b>	<b>108,350</b>	<b>102,832</b>	<b>103,667</b>	<b>103,693</b>	<b>112,004</b>	<b>119,743</b>	<b>128,333</b>	<b>151,267</b>	<b>157,399</b>	<b>156,054</b>	<b>154,977</b>	<b>160,755</b>	<b>160,516</b>	<b>170,598</b>
Claims handling								(82,812)	(87,589)	(103,910)	(114,240)	(112,571)	(133,263)	(138,827)	(151,613)
<b>Total per Financial statements</b>	<b>74,958</b>	<b>108,350</b>	<b>102,832</b>	<b>103,667</b>	<b>103,693</b>	<b>112,004</b>	<b>119,743</b>	<b>45,521</b>	<b>63,678</b>	<b>53,489</b>	<b>41,814</b>	<b>42,406</b>	<b>27,492</b>	<b>21,689</b>	<b>18,985</b>





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