

**QUEENSLAND GOVERNMENT RESPONSE TO THE RECOMMENDATIONS OF THE
FINANCE AND ADMINISTRATION COMMITTEE'S REPORT OF THE INQUIRY INTO
THE OPERATION OF QUEENSLAND'S WORKERS' COMPENSATION SCHEME**

#	Committee recommendation	Government response
1.	The Committee recommends that the definition of worker contained in section 11 remain unchanged and amendments are made to Schedule 2 to strengthen who is or is not considered to be a worker.	<p>Not supported.</p> <p>The definition of worker was amended as part of the <i>Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013</i>. The amended definition aligns with the PAYG definition used by the Australian Taxation Office, and is intended to end the current duplication and overlap of genuine sub-contractors carrying their own private insurance as well as being covered by WorkCover Queensland.</p> <p>The amended definition of worker commenced on 1 July 2013. WorkCover has been actively communicating the change to employers, notably those in the construction and transport industries.</p>
2.	The Committee recommends that Schedule 2 be amended to include crews of fishing vessels, who are paid a percentage of catch as remuneration, as workers.	<p>Not supported.</p> <p>Queensland along with South Australia, Western Australia and Tasmania have specific exclusions for the crew of fishing vessels remunerated via a percentage of the catch.</p> <p>The reason for this exclusion is that receiving a share of the gross earnings of the vessel, making them partners in an enterprise. There is no employer and their earnings are subject to market fluctuations.</p> <p>The crew of a fishing vessel who contribute to the running expenses of the vessel and receive a portion of the income are likewise not considered true "workers".</p> <p>However, the crew of a fishing vessel</p>

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		<p>who receive a wage are workers if this is their main remuneration. The crew of a fishing vessel who are paid by the number of fish they catch would also be considered workers as they are receiving piecework rates.</p> <p>Each case is considered on its own merits. In <i>Davidson v WorkCover Queensland</i> [2001] GLA/CM 1808 a deceased deckhand was found to be a worker despite receiving a percentage of the catch.</p> <p>The Government considers that a more appropriate policy response would be for WorkCover to conduct a targeted information and awareness campaign aimed at the commercial fishing industry. In addition, WorkCover will keep a register of fisher claims and their details to monitor acceptances/rejections.</p> <p>The Department of Justice and Attorney General will continue to monitor the impact of the definition of worker on the scheme and report to government where issues emerge.</p>
3.	The Committee recommends that the Department undertake an extensive awareness education and compliance campaign to assist employers and workers understand their rights, obligations and responsibilities with regard to workers compensation coverage.	<p>Supported.</p> <p>WorkCover currently undertakes education and awareness activities for employers and workers to better understand who is, and who is not covered for workers' compensation. These education and awareness activities will continue to be undertaken.</p>
4.	The Committee recommends that the Department prepare for and distribute guidance material to assessors to ensure that decisions are made in a clear and consistent manner.	<p>Supported.</p> <p>WorkCover will undertake a review of the guidance material it provides to staff.</p>

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5.	The Committee recommends that the Department monitor the WorkCover policy for Queensland jockeys to ensure that it continues to include secondary income for jockeys and apprentice jockeys in the future.	Supported. The Department Justice and Attorney General will monitor WorkCover's policy for jockeys as recommended.
6.	The Committee recommends that the current definition of injury be retained in its current form with the exception of psychological injuries which are addressed separately in section 4.4.	Not supported. It is not proposed to implement the changes recommended by the Committee to the definition of injury other than the recommended change to the definition to require employment to be " <u>the</u> major significant contributing factor" rather than " <u>a</u> significant contributing factor" for psychological and psychiatric injuries. The Department of Justice and Attorney General will continue to monitor the impact of the current definition of injury on the scheme and report to government where issues emerge.
7.	The Committee recommends that the definition of injury be considered at the next review subsequent to the roll out of 'DisabilityCare Australia' formerly known as the National Disability Insurance Scheme (NDIS) and the National Injury Insurance Scheme (NIIS).	Supported.
8.	The Committee recommends that the current provisions relating to journey claims be retained.	Supported.
9.	The Committee recommends that education programs incorporate journey claims as a topic when informing employers about workers' compensation rights and responsibilities.	Supported.

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10.	The Committee recommends that psychological injuries be included under separate provisions within the legislation.	<p>Not supported.</p> <p>Amendments to the definition of injury for psychological injuries are not supported due to the potential for unintended consequences on claims and claim rates.</p> <p>The Department of Justice and Attorney General will continue to monitor the impact of psychological injury claims on the scheme and report to government where issues emerge.</p>
11.	The Committee recommends that the definition of psychological injuries be amended to include the two types of psychological injury identified as category A and B above in section 4.5.	<p>Not supported.</p> <p>There was no evidence provided to the Committee that psychological injury claims relating to a post-traumatic event disorder are being rejected. To split the injury type into two categories with differing levels of proof may have unintended consequences on claims and claim rates. No other Australian jurisdiction makes this distinction.</p> <p>The Department of Justice and Attorney General will continue to monitor the impact of psychological injury claims on the scheme and report to government where issues emerge.</p>

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12.	<p>The Committee recommends that the current exclusions for reasonable management action be removed and be replaced with specific exceptions for normal work place practices such as:</p> <ul style="list-style-type: none"> a) where action is taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker provided that action is taken in a reasonable way; b) where a decision is made not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker's employment provided the decision is made in a reasonable way; c) action by the Authority or an insurer in connection with the worker's application for compensation. <p>AND the definition be amended to be 'the major significant contributing factor' rather than the current 'a major significant contributing factor' for Category B type psychological injury claims.</p>	<p>Supported with amendment.</p> <p>The recommended change to remove the current exclusions for 'reasonable management action', excludes workers who are subject of 'performance management'. This would see a spike in accepted psychological injury claims and have unintended consequences on claim rates. Further, the proposed definition moves away from the extensive body of existing case law.</p> <p>It is proposed to support the recommended change to the definition of a psychological injury so that employment must be 'the major significant contributing factor' to the injury.</p> <p>The Department of Justice and Attorney General will continue to monitor the impact of psychological injury claims on the scheme and report to government where issues emerge.</p>
13.	<p>The Committee recommends that the Queensland Mental Health Commission be directed to undertake a research study regarding the impact of the legislative changes if they are adopted and that this study must directly inform the next review of the Workers' Compensation Act.</p>	<p>Not supported.</p> <p>This recommendation is not supported as it is not proposed to implement the changes recommended by the Committee to the definition of injury.</p>

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14.	The Committee recommends that the Attorney-General should initiate a review of the <i>Work Health and Safety Act 2011</i> with a view to considering whether recompense to victims of workplace bullying could be made through mechanisms in that Act rather than through the Workers' Compensation Scheme.	<p>Not supported.</p> <p>Where a worker has been bullied at work and has an accepted workers' compensation claim, then it is appropriate for the injured worker to be compensated through the workers' compensation scheme. This ensures that all injured workers with an accepted work-related injury are treated consistently and have consistent benefits.</p>
15.	The Committee recommends that WorkCover review its psychological claims assessment processes, including a review of the reasons claims are set aside or varied upon review, with a view to reducing this ratio.	<p>Supported.</p> <p>WorkCover has undertaken a number of reviews in recent years of its claims assessment processes and is committed to continuous review and improvement to achieve scheme efficiencies.</p>
16.	<p>The Committee recommends that WorkCover undertake a review of its psychological claims management to include the following:</p> <ul style="list-style-type: none"> • ensure that there is provision for flexibility for claimants to provide necessary information; • inclusion of a specialist unit with suitably qualified assessors; • incorporation of a mentoring style approach to psychological claims management to help reduce anxiety levels for claimants; • incorporation of mental health and wellbeing into education and awareness processes; and • incorporation of consideration and analysis of employer claims history into claims process. 	<p>Supported.</p> <p>WorkCover has undertaken a number of reviews in recent years of its claims assessment processes and is committed to continuous review and improvement to achieve scheme improvements.</p>
17.	The Committee recommends that the Attorney-General and Minister for Justice facilitate the progression of a consistent national approach to latent onset claims.	<p>Supported.</p> <p>Work on emerging latent onset injuries such as those caused by passive smoking and sun exposure is already underway at a national level.</p>

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18.	The Committee recommends that provisions be included in the Act to enable the Minister to grant premium relief in certain circumstances.	<p>Not Supported</p> <p>WorkCover has the discretion to grant premium relief, where appropriate. It is not considered appropriate for the Minister to directly intervene in premium decisions.</p>
19.	The Committee recommends that the WorkCover/Q-COMP undertake an examination of its industry rate groupings with a view to ensuring that they more accurately reflect current industry size and risk exposure.	<p>Supported with amendment.</p> <p>WorkCover will undertake an information and awareness campaign to better inform employers of industry rate groupings.</p>
20.	The Committee recommends that the Department investigate options to enable them to provide employers with a self-audit tool so they can assess whether they are complying with the requirements of the Act.	<p>Supported.</p>
21.	The Committee recommends that the Department undertake a review of its processes to ensure that decisions, including reasons, are communicated to all parties in a clear, concise and a timely manner.	<p>Supported.</p> <p>WorkCover reviews of this type are regularly undertaken.</p>
22.	The Committee recommends that the legislation be amended to refer all allegations of fraud-related offences relating to WorkCover to Q-COMP for investigation and, if necessary, prosecution, consistent with the management of self-insurer fraud referrals.	<p>Supported.</p> <p>It is proposed to transfer the management of all fraud-related offences in the scheme to the regulator.</p>

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23.	The Committee recommends that a psychological specialty medical assessment tribunal be included on the list of specialty medical assessment tribunals under section 118A of <i>Workers' Compensation and Rehabilitation Regulation 2003</i> .	<p>Not Supported.</p> <p>Psychological injuries are assessed by the General Medical Assessment Tribunal, with 36 of its 78 members psychiatrists. A separate tribunal is unnecessary. The name "General Medical Assessment Tribunal" is preferable to "Psychiatric Assessment Tribunal" which has the potential to cause unease in the persons likely to appear before it.</p>
24.	The Committee recommends that the legislation be amended to include a requirement that employers must have a RRTWC where a statutory claims totalling 15 or more work days lost in any year and wages in Queensland for the preceding year totalling \$2.146 million or more.	<p>Not supported.</p> <p>This proposal could increase the regulatory burden for employers.</p> <p>The requirement to have rehabilitation and return to work coordinator(coordinator) currently falls on employers with annual wages of \$7.049 million, or \$2.146 million if the employer is in a high risk industry (as defined in the Regulation).</p> <p>To require employers who are not in a high risk industry to appoint a coordinator on the basis of 15 working days lost due to statutory claims would be an added layer of regulation and difficult to enforce. WorkCover would need to set up systems that notify when total working days lost reaches 15, and inform Q-COMP and the employer of the need to train and register a coordinator. This recommendation would also see the need for a coordinator vary from year to year for many employers.</p>
25.	The Committee recommends that the Department implement an accreditation system for RRTWC.	Supported.

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26.	The Committee recommends that the legislation be amended to make it mandatory for insurers to refer injured workers to an accredited return to work program if they are making a common law claim for future economic loss on the basis that they are unemployed except where the worker can demonstrate they are unable to participate in a return to work program.	<p>Supported.</p> <p>To minimise costs and red tape, insurers will be encouraged to establish in-house return to work programs accredited by the regulator.</p>
27.	The Committee recommends that the existing provisions relating to access to common law be retained.	<p>Not Supported.</p> <p>Lower end claims have remained stable or increased in certain WRI bands. In view of this, it is proposed to introduce a threshold to access common law of greater than 5% Whole Person Impairment (WPI). Under the proposal injured workers who have been medically assessed as having a permanent impairment of greater than 5% will be able to make a claim for common law damages. Those workers who have a permanent impairment of less than 5% will maintain access to statutory compensation (including lump sum compensation) under the workers' compensation scheme.</p>
28.	The Committee recommends that the Attorney-General and Minister for Justice investigate the issues of 'no-win-no-fee' arrangements and the '50/50 rule' with a view to curtailing the speculative nature of some claims.	<p>Supported.</p> <p>This recommendation has implications for personal injury proceedings generally and the Department will investigate this recommendation on the understanding that it may have implications beyond the workers' compensation scheme.</p>
29.	The Committee recommends that the Attorney-General and Minister for Justice investigate the issue of portability of records associated with the 'no-win-no-fee' arrangements.	<p>Supported.</p>

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30.	The Committee recommends that the legislation be amended to give the Minister flexibility to grant an extension of self-insurance arrangements for a further period for existing self-insurers.	<p>Supported.</p> <p>This recommendation was implemented by the <i>Criminal Law and Other Legislation Amendment Act 2013</i>, which received assent on 13 August 2013. The Act amended the <i>Workers' Compensation and Rehabilitation Act 2003</i> to give Q-COMP the discretion to issue or renew a self-insurance licence in circumstances where an employer does not meet one or more of the strict criteria for self-insurance, if Q-COMP is satisfied that special circumstances exist that warrant the employer being issued a licence or warrant the renewal of a licence. The circumstances include where an employer or self-insurer does not have 2,000 full time workers.</p>
31.	The Committee recommends that, given potential for numerous unintended consequences, the Attorney-General and Minister for Justice investigate Q-COMP's 'red tape reduction proposal' before any consideration is given to implementation of the proposal.	<p>Not supported.</p> <p>This proposal is not supported as the 'red tape reduction proposal' shifts red-tape and the burden to employers. Further there is no justification to amend existing requirements in this regard.</p>
32.	The Committee recommends that the Attorney-General and Minister for Justice investigate the financial implications of the suggested alternative methods offered before addressing this anomaly.	<p>Supported.</p>