

# **SUBMISSION TO THE FINANCE AND ADMINISTRATION COMMITTEE ON THE OPERATION OF THE QUEENSLAND WORKERS' COMPENSATION SCHEME**

CHAMBER OF COMMERCE AND INDUSTRY QUEENSLAND

3 SEPTEMBER 2012

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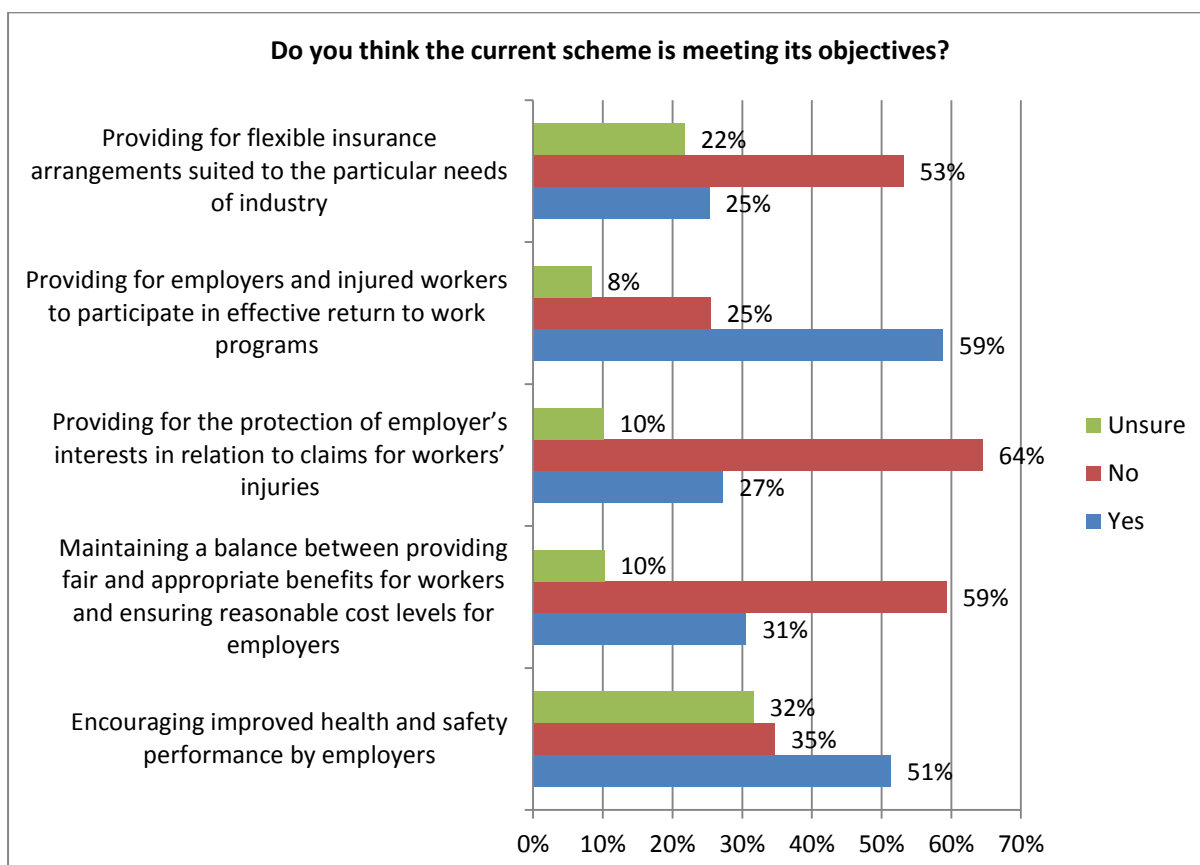
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## 1.0 OVERVIEW AND RECOMMENDATIONS

- 1.1 As the State's peak business and industry organisation, the Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to provide feedback to the Queensland Legislative Assembly's Finance and Administration Committee Inquiry on the operation of the Queensland workers' compensation scheme.
- 1.2 This review provides an excellent opportunity for CCIQ to provide information on behalf of Queensland business and industry regarding the operation of the workers compensation scheme since the 2010 review and comment on how the changes are influencing business in the State. This Inquiry has an opportunity to assess the existing effectiveness of the scheme and to make the necessary improvements to help restore Queensland's competitive business operating environment.
- 1.3 CCIQ is committed to achieving best practice workers' compensation arrangements for the protection of employers and workers. This includes maintaining a financially sound insurer in WorkCover that adequately protects employers and workers against genuine work-related injuries, at affordable and competitive premiums.
- 1.4 Queensland's workers' compensation scheme is highly regarded by all stakeholders and frequently acknowledged as one of the leading schemes in Australia. However, Queensland businesses are overwhelming in their view that the scheme is skewed towards claimants. This results in premium costs being higher than they otherwise need to be.
- 1.5 There is no doubt that the reforms of 2010 have somewhat tempered the escalating costs of the scheme but it has been at the expense of employer premiums. In general employers feel they are treated as „guilty“, with claims being paid regardless of the workplace health and safety policies and processes in the workplace.
- 1.6 The 2012 Inquiry provides an opportunity to bring the balance of the workers compensation scheme back to the centre, providing compensation for those genuinely injured at work and offering employers adequate insurance in the event of a workplace accident. One of the best ways to achieve this is to have premiums that accurately reflect claims history but also current risk.



Source: CCIQ Workers Compensation Survey, July 2012

**Quote from business regarding the operation of the scheme**

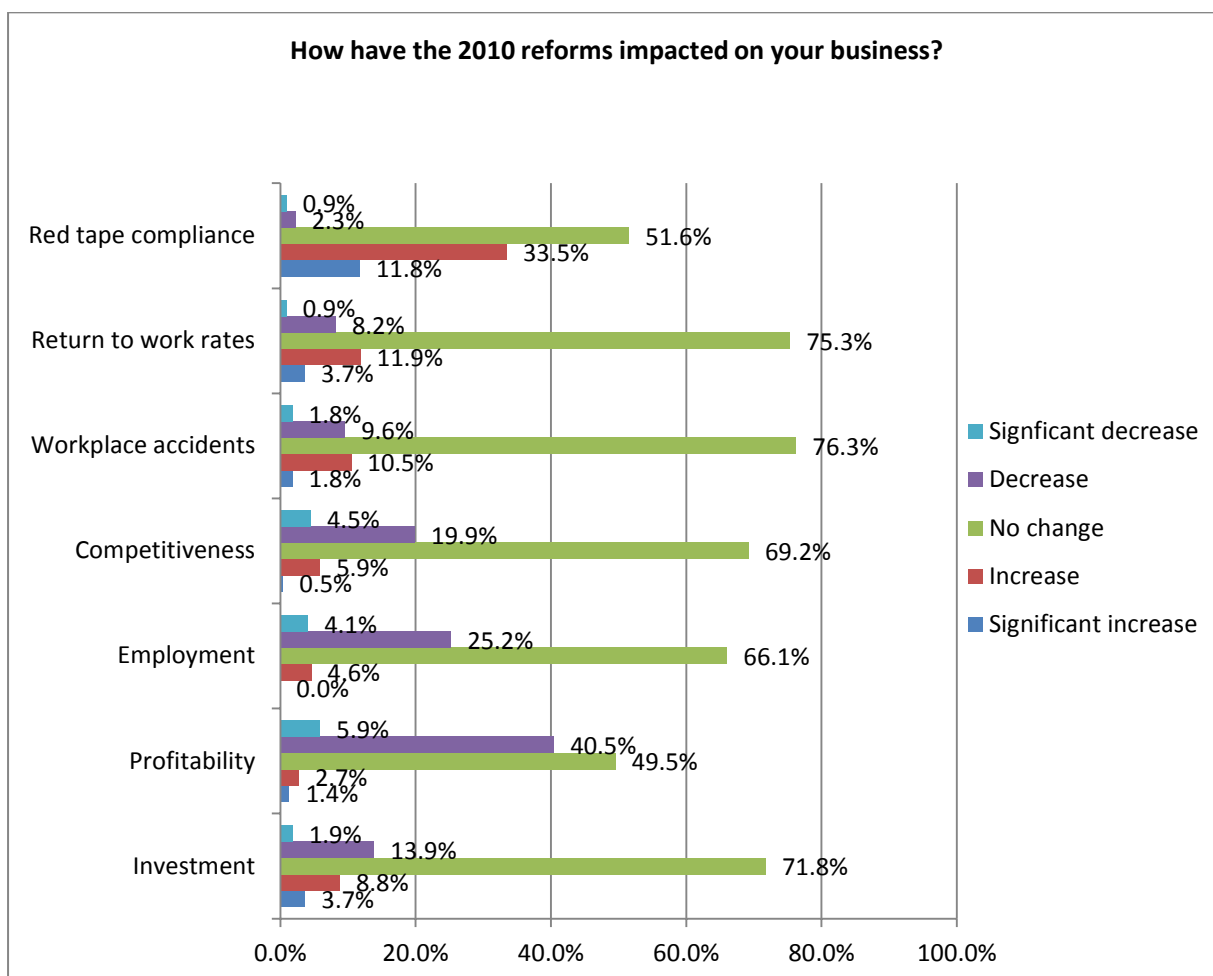
*"There needs to be a far greater balance in employee /employer issues. The system is far too biased to employees."*  
**- Queensland Business**

- 1.7 CCIQ has a highly respected advocacy and research department which avails itself to provide further assistance to this Inquiry. Further to this CCIQ would be pleased to act as a conduit between the Inquiry and the 25,000 businesses that the Chamber represents.
- 1.8 CCIQ does not propose a fundamental change to what is in the main a solid performing workers' compensation scheme. However CCIQ does recommend peripheral changes to restore balance. CCIQ's recommendations as part of this submission include:
  - **The State Government commit to the introduction of a Whole Person Impairment (WPI) threshold to accessing common law damages and a working party be established to determine the appropriate threshold level (0-15 per cent); When a working party is established, CCIQ would actively support the working party through participation and/or facilitation. The working party should have clear objectives, one of which should be to determine the level of the WPI threshold to accessing common law damages. CCIQ strongly supports a whole person impairment threshold of 15 per cent for common law claims. This figure is consistent with CCIQ's recommendations in the 2010 workers' compensation submission and most recently in CCIQ's *Big 3 for Business* publication.**

- **Recognition of efforts and investment by employers in workplace health and safety and injury prevention through lower WorkCover premiums;**
- **Increased emphasis on worker accountability;**
- **Strengthening the requirements to prove an injury occurred in the workplace;**
- **Increased emphasis on return to work initiatives by all key stakeholders;**
- **The definition of ‘worker’ under the Workers’ Compensation and Rehabilitation Act 2003 be harmonised with Australian taxation legislation;**
- **Narrowing the definition of workplace ‘injury’ so that employment is ‘the significant contributing factor’ to the injury (including for psychological claims);**
- **Specialist medical advice and documentation to be sought in relation to psychological claims; and**
- **Exclusion of ‘journey to and from work’ in claims for workers’ compensation.**

## **2.0 2010 REVIEW**

- 2.1 Following a disappointing consultation process in 2010, the previous State Labor Government amended the *Workers’ Rehabilitation and Compensation Act 2003* (the Act). The overarching objective of the 2010 review was to alleviate and improve upon WorkCover’s worsening financial position.
- 2.2 The discussion paper released in 2010 highlighted a number of factors that contributed to WorkCover’s financial situation, including:
- Growth in net claims expenditure resulting from an increase in common law claim numbers in comparison to statutory claim payments and number of claims;
  - Two consecutive years of negative investment returns due to the global financial crisis;
  - Perception of income not keeping pace with net claims growth.
- 2.3 The 2010 review embarked upon reigning in WorkCover expenditure and the growth of common law claims. This resulted in an increase in WorkCover premiums and changes to bring statutory and common law entitlements under the Act in line with the *Civil Liabilities Act 2003*. However unfettered access to common law was left untouched as a result of union and plaintiff lawyer pressure on the then ALP State Government.
- 2.4 The 2010 changes have had a negative impact on employers and distorted the balance of the scheme significantly towards workers. Feedback from CCIQ’s membership indicates there has been no substantial improvement in the occurrence of workplace accidents as a direct result of these reforms.



Source: CCIQ Workers Compensation Survey, July 2012

2.5 Please refer to CCIQ's 2010 submission contained in Appendix 2. Many of the points raised within this submission continue to be of high relevance to this Inquiry.

### 3.0 CURRENT REVIEW

- 3.1 CCIQ undertook a survey in July 2012 of Queensland businesses in order to provide comprehensive, accurate and evidence-based feedback on the operation of the scheme over the past two years. The survey comprised a mix of qualitative and quantitative questions designed to capture a comprehensive overview of employer's experiences with the scheme and its perceived impact on Queensland businesses. Survey demographics are detailed in Appendix 1.
- 3.2 In addition to the survey, CCIQ hosted a roundtable event with relevant industry associations to discuss required reforms which are raised within this submission. WorkCover delivered an overview of the current workers' compensation framework and WorkCover's progress since the implementation of the 2010 reforms.
- 3.3 CCIQ looks forward to working with this State Government to ensure that any further changes to the existing scheme deliver an equitable mechanism that treats all

stakeholders impartially and delivers fair and decisive outcomes for all stakeholders involved in the workers compensation scheme.

CCIQ commends the following terms of reference and has provided detailed responses across the submission:

1. The performance of the scheme in meeting its objectives under section 5 of the Act;
2. How the Queensland workers' compensation scheme compares to the scheme arrangements in other Australian jurisdictions;
3. WorkCover's current and future financial position and its impact on the Queensland economy, the State's competitiveness and growth;
4. Whether the reforms implemented in 2010 have addressed the growth in common law claims and claims cost that was evidenced in the scheme from 2007-08;
5. Whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment;
6. In conducting the Inquiry, the committee should also consider and report on implementation of the recommendations of the Structural Review of Institutional and Working Arrangements in Queensland's Workers' Compensation Scheme.

## **4.0 QUEENSLAND WORKERS' COMPENSATION SCHEME**

- 4.1 The Queensland workers' compensation scheme is unique. It is one of only two jurisdictions (along with the ACT) that allow unlimited access to common law. This is premised due to the „short tail“ nature of the scheme, but also as a long-standing concession to unions and plaintiff lawyers. A short tail scheme is designed to cap the amount and length of statutory compensation available to injured workers. This is offset by allowing uncapped access to common law damages (i.e. there is no work-related threshold required to seek damages).

#### Access to common law damages in Australian jurisdictions

<b>Jurisdiction</b>	<b>Common Law Access</b>
<b>Victoria</b>	Yes (30% Whole Person Impairment) or „serious injury“ under the Accident Compensation Act 1985 section 134AB
<b>New South Wales</b>	Yes (15% Whole Person Impairment)
<b>Queensland</b>	Yes - If Work Related Impairment less than 20% the injured worker must choose between common law damages or statutory compensation
<b>Western Australia</b>	Yes (15% Whole Person Impairment)
<b>South Australia</b>	No Access
<b>Tasmania</b>	Yes (20% Whole Person Impairment)
<b>Northern Territory</b>	No Access
<b>Australian Capital Territory</b>	Unlimited

Source: Information for this table was sourced from Safe Work Australia<sup>1</sup>

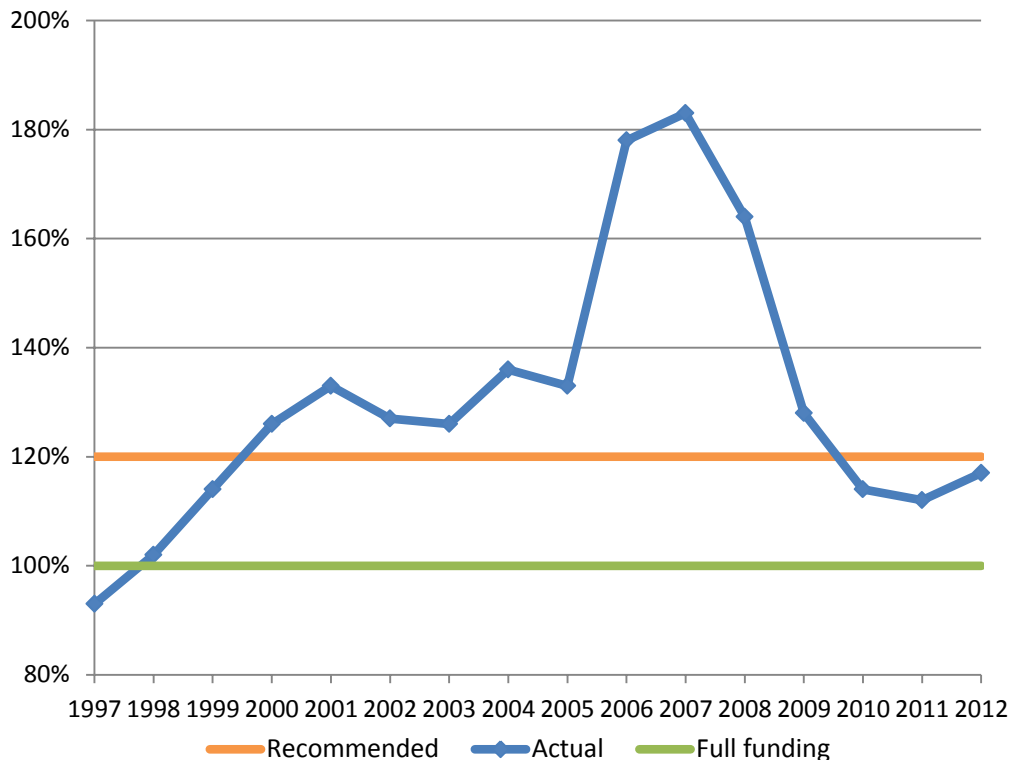
- 4.2 In Queensland, workers' compensation insurance is only available through WorkCover Queensland as a policy provider, unless a licence is granted to self-insure (there are currently only 25 self-insurance licences in Queensland). This is also unique to Queensland, as all other states and territories have opened up the workers' compensation insurance market to increased competition and are privately underwritten or funded under hybrid models by government and the private sector. The only other centrally funded scheme is Comcare that is administered by the Commonwealth Government for the benefit of public sector employees.
- 4.3 Considering WorkCover's financial position just a few years ago, the outlook is generally positive. WorkCover's operating result after tax for the period ending 30 June 2012 is projected to be a surplus of \$160 million.<sup>2</sup>
- 4.4 CCIQ congratulates WorkCover on the insurer's fiscal recovery from its vulnerable position in 2007-08 and 2008-09. However, CCIQ is concerned to ensure that WorkCover's continued recovery is reflected in lower employer premiums and once again returning Queensland to the state with the lowest WorkCover premium and promoting Queensland as a competitive and prosperous business operating environment.

<sup>1</sup> Safe Work Australia, Comparison of Workers Compensation Arrangements in Australia and New

<sup>2</sup> Q-COMP Queensland Workers' Compensation Scheme Monitoring May 2012, 12.



**WorkCover Funding 1997 - 2012 (Projected 30 June 2012)**



Source: WorkCover 2012

- 4.5 CCIQ also congratulates WorkCover on its improved performance in the areas of customer service and claims management. Recent monitoring of injured workers' experience with the scheme indicates a 3.8 per cent rise in customer satisfaction (higher than the national average at 3.1 per cent).<sup>3</sup> This rise was uniform across all key indicators. We have also received encouraging anecdotal reports of significant improvements in employer experiences with WorkCover. The previous reforms' intention to promote increased harmony between the main organisations (Q-COMP, WorkCover Queensland and Workplace Health and Safety Queensland) appears to be achieving its objective of increased dialogue and coherency.
- 4.6 However there remains room for improvement and further transparency in claims management, particularly during escalation from statutory compensation to common law proceedings and settlements. CCIQ recommends improved education for policy holders about the WorkCover system which will go some way towards alleviating tension between employers and WorkCover in the area of claims management.
- 4.7 Some employers have cited the lack of competition in the workers' compensation insurance market as restrictive and counter-competitive. It has been suggested by some

<sup>3</sup> Campbell Research, Return to Work Monitor for 2011-12 for Heads of Workers Compensation Authorities.

CCIQ members that the insurance market be opened up for competition as in other industries such as motor vehicle and health insurance.

- 4.8 Equally, many CCIQ members also hold the view that WorkCover is best placed to administer a workers' compensation insurance scheme. CCIQ reserves judgement on the benefit of competition particularly given the considerable improvement demonstrated by WorkCover. Accordingly, for the time being, CCIQ continues to support the existing framework of a single government-underwritten scheme. However, the committee may wish to give consideration to using private insurers to supplement WorkCover's claims management. This may possibly improve resourcing available to contest common law claims, which is addressed in more detail in section 7.0.

**Quotes from businesses regarding insurance competition**

*"I do NOT support the privatisation of WorkCover. The role of private enterprise is to be self-sustaining and to make money and this goal is not compatible with the regulatory requirements for workers health and safety."*

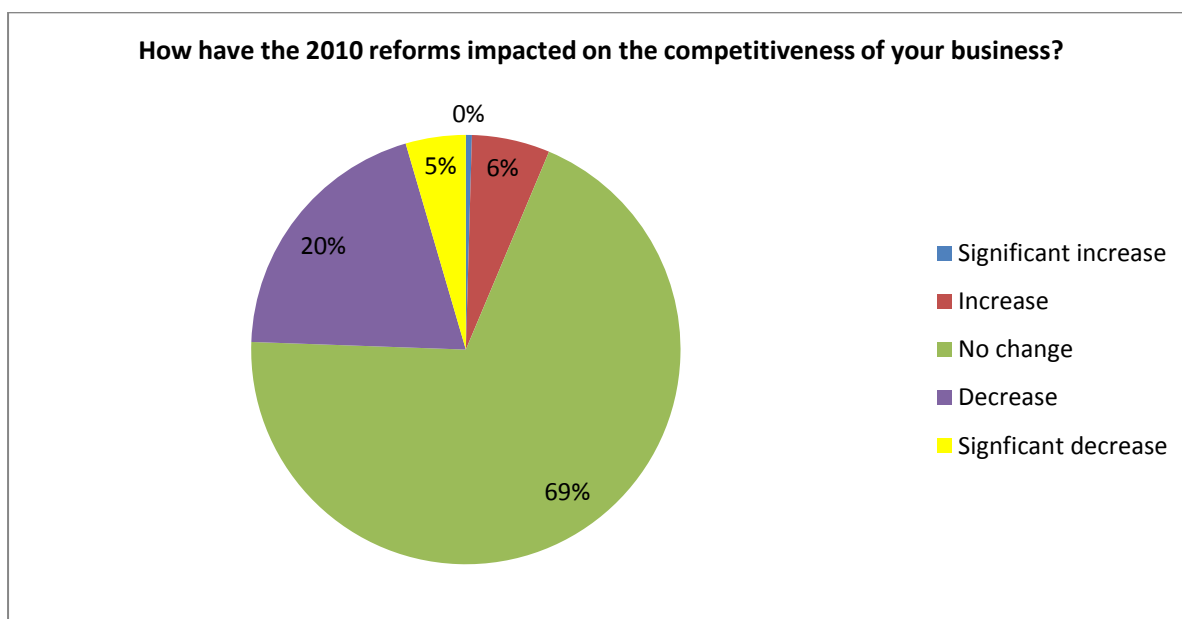
**- Queensland Business**

*"WorkCover is most fairly and efficiently run by the public sector."*

**- Queensland Business**

## **5.0 COMPETITIVENESS**

- 5.1 CCIQ recognises the vital role that a competitive business operating environment plays in building and sustaining the Queensland economy. Creating a strong business operating environment that allows local industries to compete is pivotal to the economic wellbeing of Queensland. Queensland's low-paid workers' compensation premiums are a central element in our State's efforts to keep our business operating environment competitive.



Source: CCIQ Workers Compensation Survey, July 2012

- 5.2 WorkCover has consistently delivered the lowest or second lowest premium rates of all Australian states and territories. However the 2010 reforms resulted in an increase in premiums from \$1.15 per \$100 of wages paid by the employer to \$1.30, with the current average premium rate at \$1.45 (CCIQ notes that many businesses are paying well above this figure).

#### Jurisdictional Comparison of Workers' Compensation Premiums 2002-03 to 2012-13

Jurisdiction	2012-13	2011-12	2010-11	2009-10	2008-09	2007-08	2006-07	2005-06	2004-05	2003-04	2002-03
Queensland	1.45	1.42	1.30	1.15	1.15	1.15	1.20	1.43	1.55	1.55	1.55
New South Wales	1.68	1.68	1.66	1.69	1.72	1.86	2.17	2.57	2.65	2.57	2.80
Victoria	1.29	1.34	1.34	1.39	1.39	1.46	1.62	1.80	1.98	2.22	2.22
Western Australia	1.69	1.55	1.50	1.74	1.58	1.85	2.12	2.32	2.25	2.34	2.47
South Australia	2.75	2.75	2.75	3.00	3.00	3.00	3.00	3.00	3.00	3.00	2.46

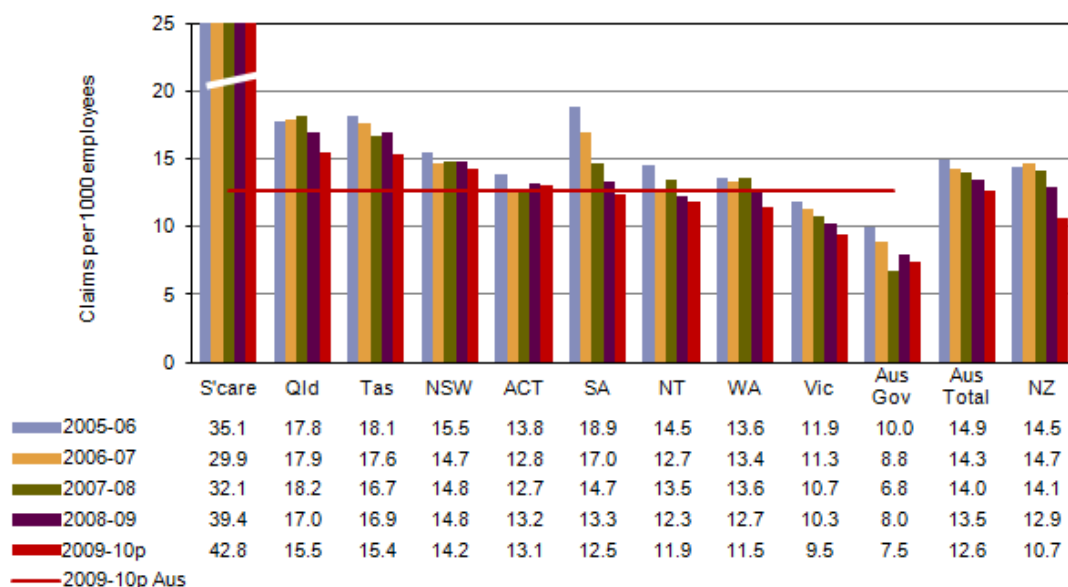
Source: WorkCover 2012

- 5.3 In CCIQ's 2010 submission we recommended against any increase in premiums to supplement WorkCover's fiscal imbalance. Increasing premiums harms Queensland's competitive advantage. Low premiums promote employment, investment and an overall level of economic activity commensurate with the State's "low tax" status of all states.
- 5.4 Accordingly, CCIQ opposes any increase in the current premium rate for employers. Any increase in premiums imposes a cost burden that would constitute a significant risk to Queensland businesses. The majority of Queensland businesses do not operate with margins or reserves which would allow them to pay significant additional premiums. It is not simply profit or margins that would be threatened but also business viability and the capacity of the business to offer employment.

## 6.0 PREMIUMS AND RETURN ON INVESTMENT

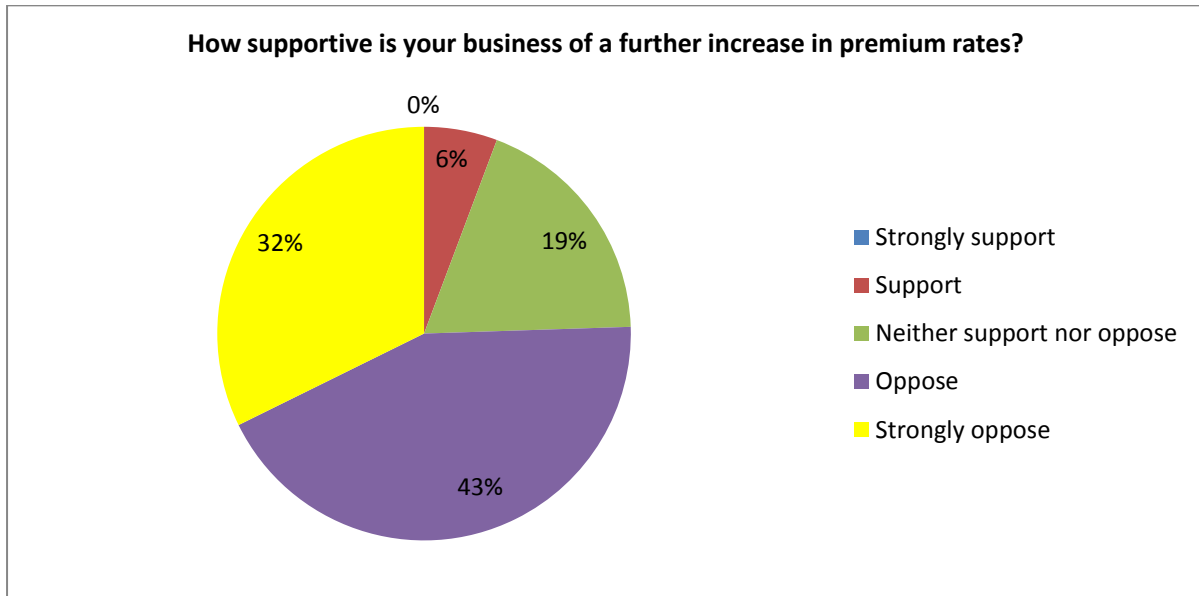
- 6.1 The best possible outcome for all stakeholders would be no workplace injuries at all and accordingly no need for a compensation framework. Unfortunately this is not realistic. However Queensland can strive for a culture of significantly improved workplace health and safety within workplaces. CCIQ is supportive of employer and regulatory initiatives that have an increased focus on injury prevention and harm minimisation.
- 6.2 Greater return on investment reflected through lower premiums would provide significantly more incentive for employers to invest in workplace health and safety training, improved procedures, and upgraded plant and equipment. This would improve Queensland's overall performance against other states in the area of safety as measured by the below graph.

**Frequency rates of serious injury and disease claims by jurisdiction**



Source: Safe Work Australia, March 2011





Source: CCIQ Workers Compensation Survey, July 2012

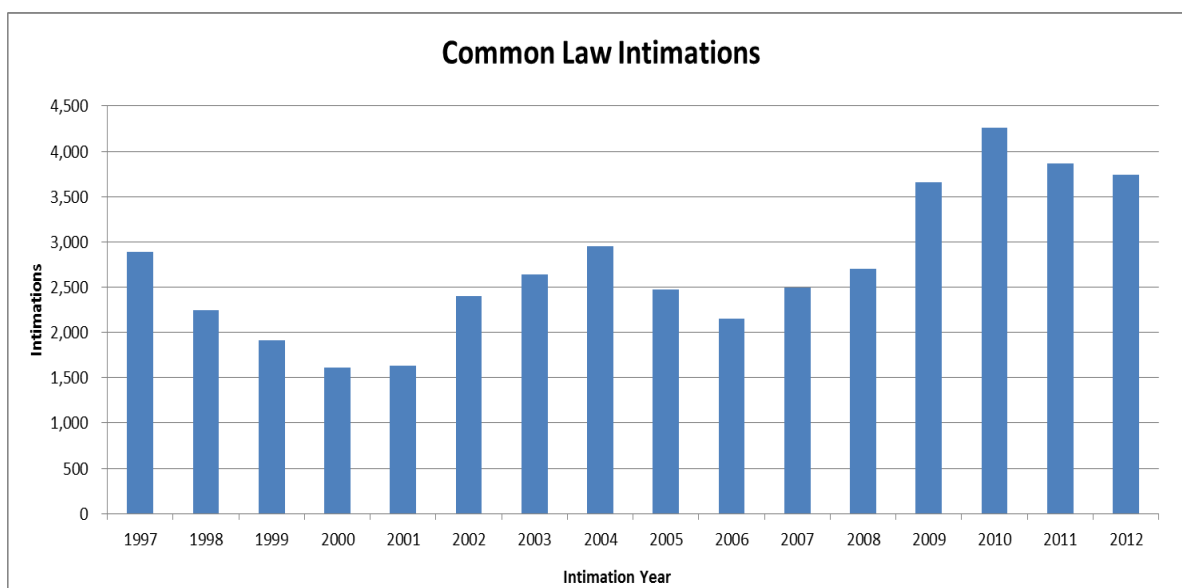
- 6.3 Members continue to express dissatisfaction with the experienced based rating (EBR) on which Queensland premiums are calculated. This system is not yet adequately representing the investments employers are making in workplace health and safety training and infrastructure. This results in proactive employers being penalised and carrying the burden of higher premiums. Premium calculation should be providing an incentive for employers to improve workplace health and safety and injury prevention.

### **RECOMMENDATION**

Increased recognition of efforts and investment by employers in workplace health and safety and injury prevention through lower WorkCover premiums.

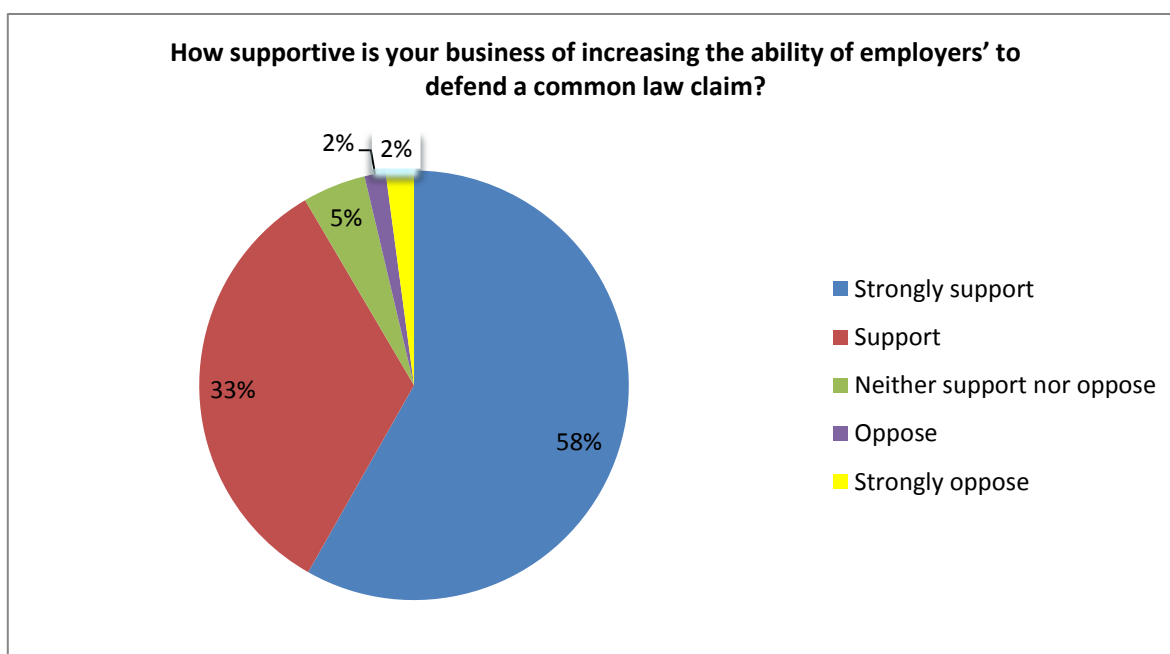
## **7.0 COMMON LAW CLAIMS**

- 7.1 Common law claims continue to cause increasing concern to employers. The lack of restraint and easy access to litigation remains an area in need of urgent reform despite the 2010 changes. The 2010 review recommended against the introduction of a common law threshold. CCIQ strongly advocated for the introduction of a threshold of 15 per cent WPI during the 2010 review and most recently in the *Big 3 for Business* publication.



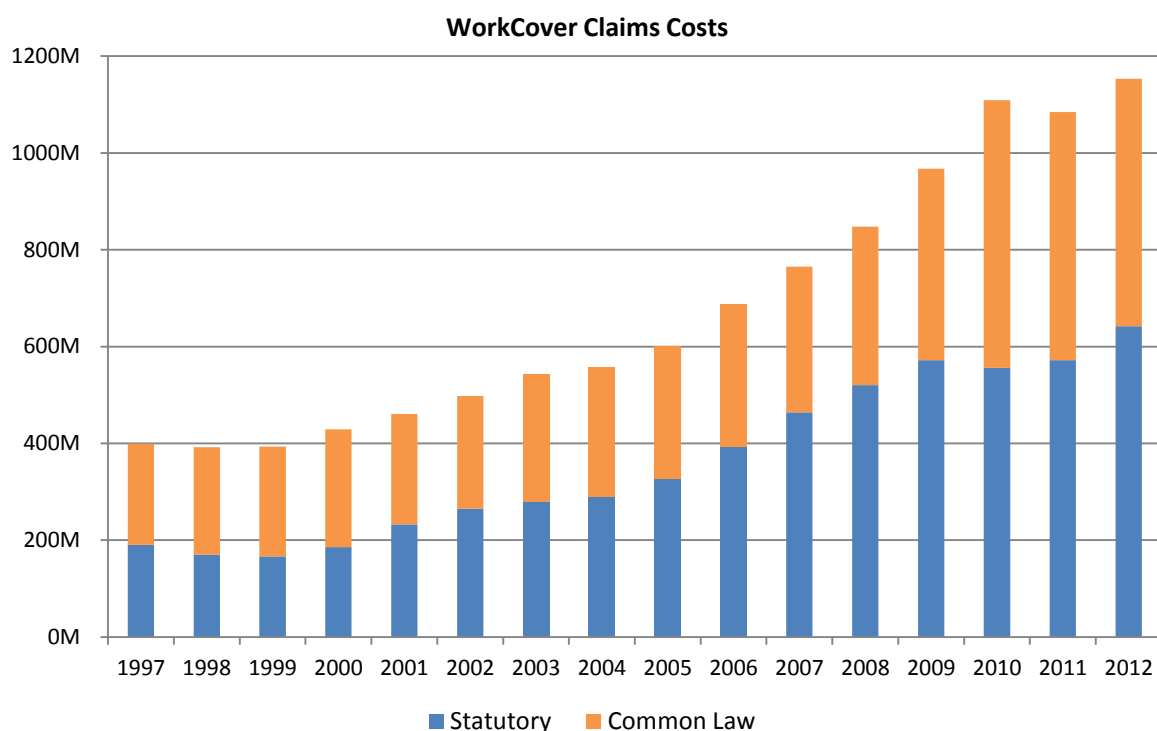
Source: WorkCover 2012

- 7.2 CCIQ notes that WorkCover's statistics continue to show common law intimations at well above the historical average, despite the recent tapering in claims.
- 7.3 CCIQ acknowledges the limited reform attempt to reduce common law claims intimations and costs by aligning the workers compensation legislation with the *Civil Liabilities Act 2003* that requires an injured worker to prove negligence against an employer. This has had a beneficial, albeit limited, impact on claim numbers.



Source: CCIQ Workers Compensation Survey, July 2012

- 7.4 Despite this change, common law claims continue to represent a significant and unjustifiable portion of scheme costs. The Queensland business community is strongly supportive of a further increase in their ability to defend common law claims.

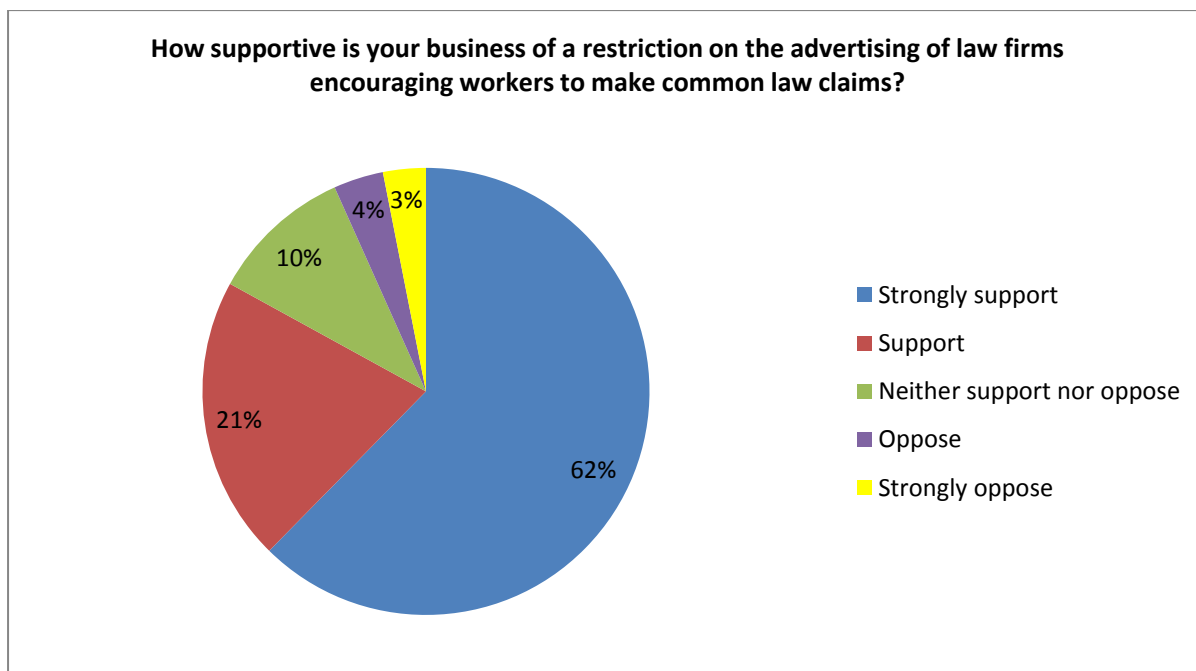


Source: WorkCover 2012

- 7.5 Given only 4.5 per cent of statutory claims progress to common law, common law claims account for a disproportionate overall cost of the scheme. In 2010-11, common law claims made up 46.0 per cent of claim costs, with the average common law claim settlement (\$120,150) costing approximately 17 times more than the average cost of a statutory claim (\$7,070).<sup>4</sup>
- 7.6 The Queensland business community is concerned that large personal injury firms are profiteering at the expense of employers by encouraging injured workers to pursue legal action by promoting „no win, no fee“ services and promising large compensation payouts. Of particular concern is that these law firms encourage and take on as clients those workers who would otherwise not seek to pursue actions for common law damages for minor injuries that often constitute a work-related impairment of zero per cent or less.
- 7.7 CCIQ notes the autonomy of the legal profession and the existence of the *Personal Injuries Proceedings Act 2002* (PIPA) that regulates the advertising of personal injury services by legal practitioners. Queensland businesses strongly support increased enforcement of the PIPA in regulating the advertising of the legal profession. Deliberate

<sup>4</sup> Department of Justice and Attorney-General, Q-COMP, WorkCover Queensland, Information Paper: Finance and Administration Committee's Inquiry into the operation of Queensland's workers' compensation scheme 2012, 26.

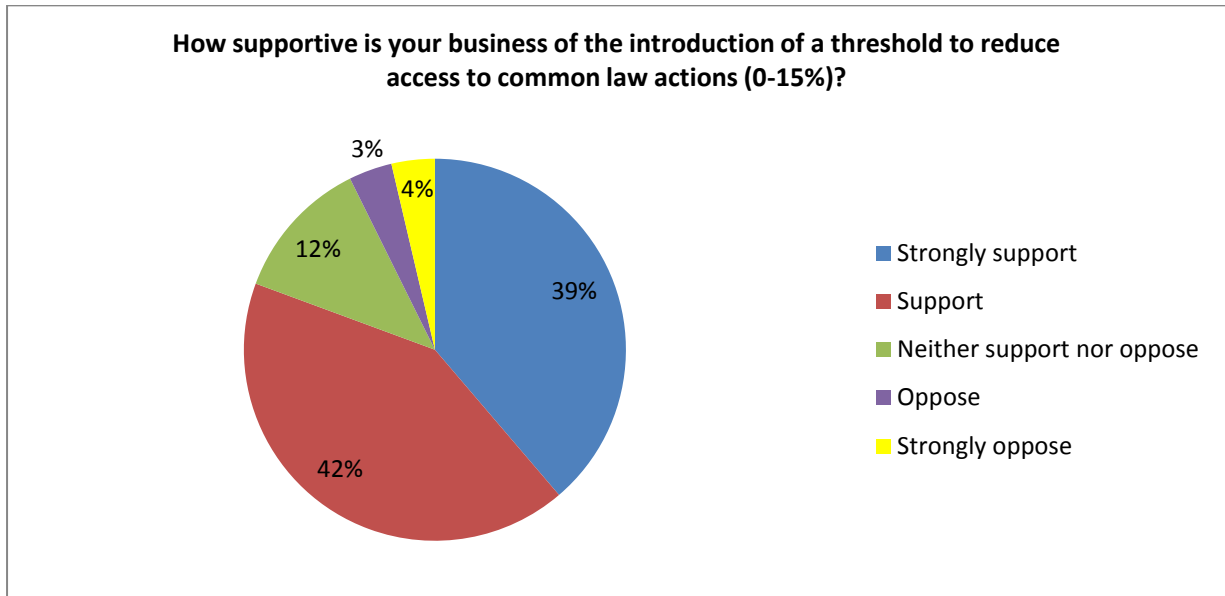
targeting of advertisements in low socio-economic areas perpetuates the incidents of common law claims that increase employer premiums.



Source: CCIQ Workers Compensation Survey, July 2012

- 7.8 Accordingly, personal injury firms must run a large number of these claims at minimal cost to themselves. Unlike the WorkCover scheme, the primary focus is neither on the injured worker nor their rehabilitation, but rather maximising the value of these claims when viewed collectively.
- 7.9 This has created a „common law churn“, whereby the sheer volume of these claims mean that WorkCover is obliged to settle the large majority of common law claims at compulsory conferences or mediations, rather than pursue the issue in formal court proceedings due to time and cost considerations. As a result, personal injury firms are able to avoid the rigor and cost of court proceedings whilst benefiting from low thresholds for the payment of statutory legal costs.
- 7.10 This „churn“ has promoted an uneasy relationship between employers, injured workers and WorkCover. Where common law claims are instigated, it inevitably affects the willingness of the injured worker to complete a full return to work; doing so will affect the veracity of their common law claim. This is frustrating for employers who pay their WorkCover premiums and act in good faith in endeavouring to facilitate the return of a worker to a safe and healthy workplace.





Source: CCIQ Workers Compensation Survey, July 2012

- 7.11 Queensland businesses are resolute in their call for the implementation of a common law threshold. The arguments for a threshold also relate to philosophical objections to accessing common law relief where the injured worker has not received a permanent injury. Additionally, a common law action in reality all but precludes an injured worker returning to the same workplace where the injury occurred.
- 7.12 CCIQ considers that the WorkCover scheme operates with the best interests of both employers and employees, providing appropriate rehabilitation and compensation where necessary with the ultimate goal of returning employees to a safe and healthy workplace. Of course, we understand that sometimes an employee must seek recourse to the common law with the assistance of a lawyer, and we do not seek to denigrate the choice of the employee or the role of the legal profession where such action is genuinely warranted.

### **RECOMMENDATION**

The State Government commit to the introduction of a work-related injury threshold to access common law damages and a working party be established to determine the appropriate threshold level (0-15 per cent). When a working party is established, CCIQ would actively support the working party through participation and/or facilitation. The working party should have clear objectives, one of which should be to determine the level of WPI threshold to accessing common law damages. **CCIQ strongly supports a whole person impairment threshold of 15 per cent for common law claims.** This figure is consistent with CCIQ's recommendations in the 2010 workers' compensation submission and most recently in CCIQ's *Big 3 for Business* publication.

### Quotes from businesses regarding common law claims

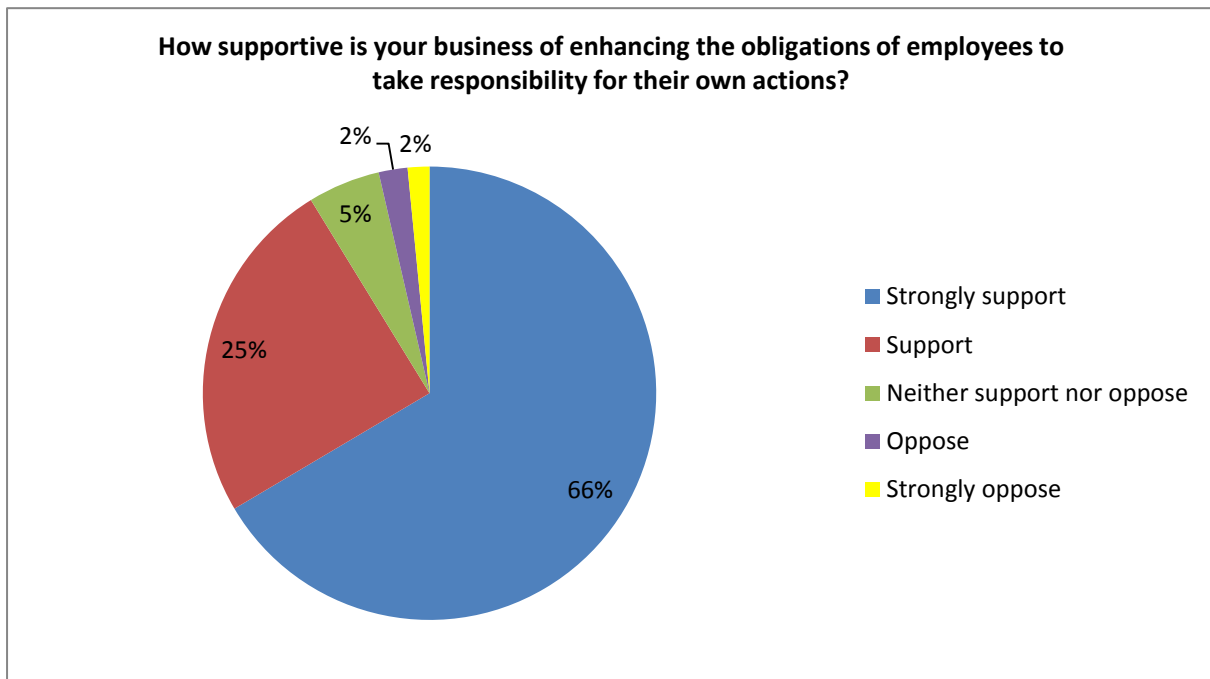
*"We are still being penalised for a Common Law claim by a dishonest employee. We have been penalised since 2008-2009, I cannot understand this. Our premium continues to go up and up because of this one claim. Even though we had very good proof this was not a genuine claim, the employer has no voice."*  
**- Queensland Business**

*"After lengthy exposure to Common Law claims and witnessing the behaviour of claimant solicitors (particularly no-win, no-fee) who appear to give their clients a false/unrealistic sense of what their settlement quantum will be, something needs to be done to reign them in. It is unfortunately rare that at the end of the common law process that either party is satisfied with the outcome. Would definitely support increase in enforcing that workers take more responsibility for their own actions."*  
**- Queensland Business**

*"Inconsistency in court judgements means that work cover has no option but to do financial risk assessments, and horse trade with law firms even though the plaintiff's case may be weak. Law firms realise that even weak cases will result in financial reward for themselves and clients. Work Cover has become an industry in compensation rather than a safe guard for genuine cases."*  
**- Queensland Business**

## **8.0 WORKER ACCOUNTABILITY**

- 8.1 Whilst all stakeholders strive for fewer workplace accidents and increased prevention of workplace injuries, greater accountability needs to be placed on employees for their own health and safety, regardless of the operation of a „no fault“ scheme.
- 8.2 When workplace accidents occur as a result of employee misconduct or negligence, due to the „no fault“ operation of the scheme, there tends to be little investigation of the accident and claims are paid out regardless of whether or not the employee contributed to the accident through their omissions or carelessness. CCIQ recognises these situations are catered for under section 130 of the Act; however there has been reluctance in the past to engage this provision and make workers responsible for their own safety.
- 8.3 Employers invest heavily in establishing and maintaining best practice workplace health and safety policies, including training programs and initiatives for new and ongoing employees, updating and upgrading health and safety processes in the workplace, continuous monitoring of procedures and consultation with key stakeholders. Employers are increasingly frustrated when the time, effort and money that is invested in workplace health and safety goes unheeded by employees and results in workplace accidents.



Source: CCIQ Workers Compensation Survey, July 2012

- 8.4 CCIQ notes the increased responsibilities placed on workers to account for their own health and safety under the new *Work Health and Safety Act 2011*. The Queensland business community welcomes these changes and looks forward to monitoring the impact the new legislation will have on workplace accidents. CCIQ is genuinely hopeful of a reduction in workplace accidents as an outcome from the prevention strategies noted in the *Work Health and Safety Act 2011*.

### **RECOMMENDATION**

There should be increased accountability for workers' compliance with health and safety procedures in assessing workers compensation claims.

#### **Quotes from businesses regarding worker accountability**

*"Little weight appears to be placed on the employers statements and processes for injuries suffered and return to work when the employee has failed to follow work place procedures, protocol and directions and been injured"*

**- Queensland Business**

*"Greater accountability for the employee for their actions within the workplace and recognition of the actions of the employer to minimise risk for workers when considering a workers' compensation claim"*

**- Queensland Business**

## 9.0 JOURNEY CLAIMS

- 9.1 Although journey claims make up only 6 per cent of WorkCover claims, they are nearly twice as expensive as the average claim cost at \$13,571 in 2011-12 YTD. The gap between average claims cost and journey claims cost has steadily increased since 2007-08.<sup>5</sup> Journey claims are provided for under compulsory third party insurance, so any inclusion of journey to and from work duplicates what already exists under alternative, but equally accessible frameworks.
- 9.2 CCIQ acknowledges the exclusion of journey claims from premium calculations and assessments, as evidence of recognition that such events are almost always outside employer control. It is easy for this claim to be exploited, as workers may at any time claim they are travelling to or from work and there is insufficient detail required under the legislation to prove otherwise.
- 9.3 Other jurisdictions have also moved to curtail the inclusion of journey to and from work under workers compensation including Victoria, which currently offers the most competitive workers compensation premiums in the country.
- 9.4 Additionally, New South Wales has recently moved to limit access to claiming journey to and from work from its workers compensation scheme. The recent reforms to the NSW workers compensation scheme now require a „substantial connection“ between the injured worker’s employment and the incident out of which the injury arose, for the claim to be eligible.
- 9.5 Of course, the requirement of some workers in remote locations to travel great distances (often in their own time) will require examination. CCIQ considers this a peripheral issue, as it relates to a minority of workers. In the event of a change striking out the journey to and from work, individual contractual agreements should arrange for the inclusion of such journeys in the terms of employment where necessary.

### RECOMMENDATION

The removal of journey claims to and from the place of employment for workers compensation purposes.

#### Quote from business regarding journey claims

*“Remove liability to employers of journeys to/from work, these can/may be covered by person's own vehicle insurance or public transport general cover if that's the case.”*

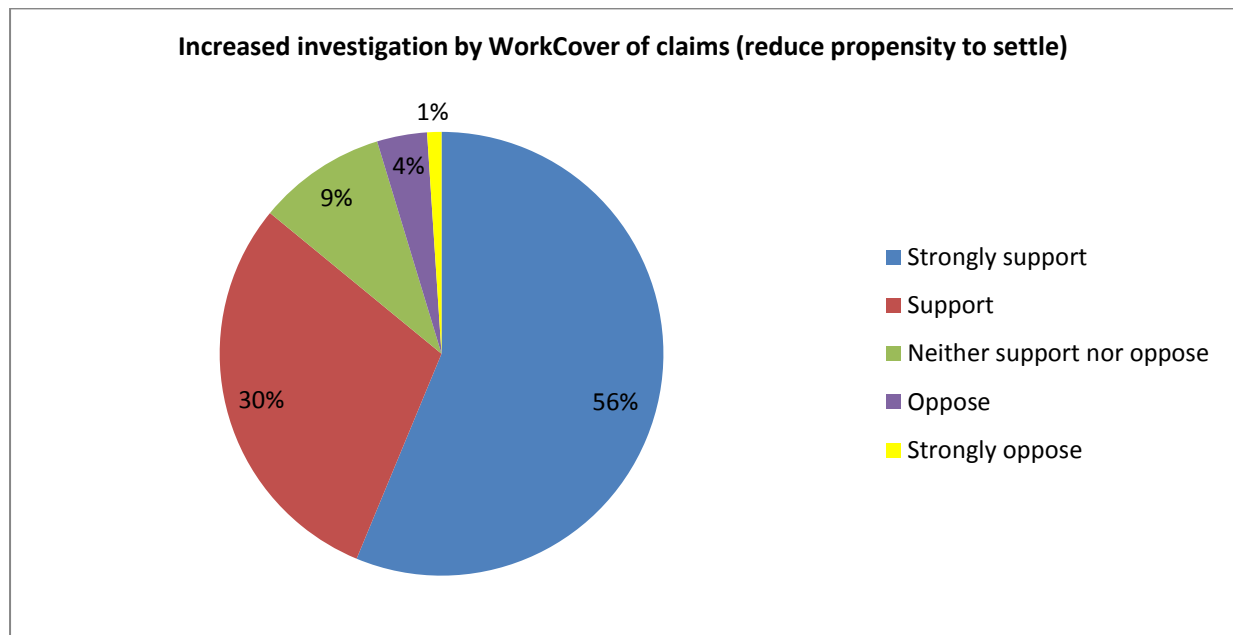
**- Queensland Business**

<sup>5</sup> Q-COMP Queensland Workers’ Compensation Scheme Monitoring May 2012, 21.



## 10.0 PROOF OF INJURY

- 10.1 Employers are increasingly concerned about the incidence of workers compensation claims relating to pre-existing injuries or injuries that occur outside of the workplace. The general view held by employers is the lack of investigation by the medical profession as to whether WorkCover claims are in fact work-related or whether there was a pre-existing injury, or injury caused by other aspects of the individual's life.

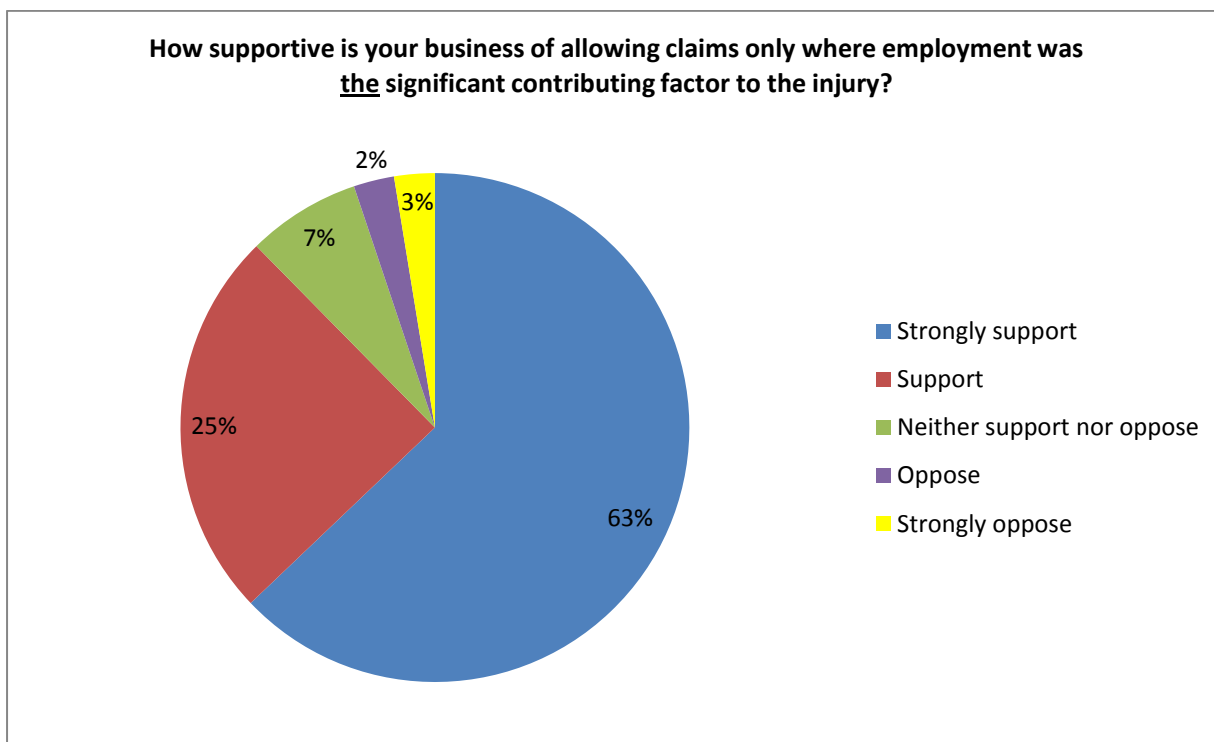


Source: CCIQ Workers Compensation Survey, July 2012

- 10.2 This lack of investigation can result in a greater number of WorkCover claims that in turn affect employer premiums and increase the occurrence of fraudulent or exaggerated claims.
- 10.3 Employers do not wish to deny those workers who are genuinely injured in the workplace from seeking fair and reasonable compensation. However, the role of the medical profession is increasingly important to the scheme as it continues to evolve and improve. Their assistance is of pivotal importance as it indirectly influences the calculation of employer premiums and the ability of employers to assist injured workers return to work.
- 10.4 Short of accreditation, medical practitioners must be „coached“ to a greater degree about the workers compensation scheme and its impacts on employers and businesses. CCIQ seeks to ensure that medical practitioners work collaboratively with stakeholders to ensure injured workers receive the best possible advice about return to work and rehabilitation strategies where appropriate.

### RECOMMENDATION

Strengthen the requirements of proof an injury occurred in the workplace.



Source: CCIQ Workers Compensation Survey, July 2012

- 10.5 Currently, for an injury sustained in the workplace to be eligible for workers compensation, employment must be a significant contributing factor to the injury. In order to make the definition fairer to exclude any claims for pre-existing injuries, or sustained in other activities of an individual's life, CCIQ is supportive of a revised definition that employment must be "the" significant contributing factor to the injury. Although this is a subtle legislative change, the legal interpretation of "the" as opposed to "a" as a defining term may mean the difference between a substantial compensation claim and a fair compensation claim.

### **RECOMMENDATION**

To be eligible to claim compensation under the workers compensation scheme, employment must be the significant contributing factor to the injury.

### **Quotes from businesses regarding the definition of 'injury'**

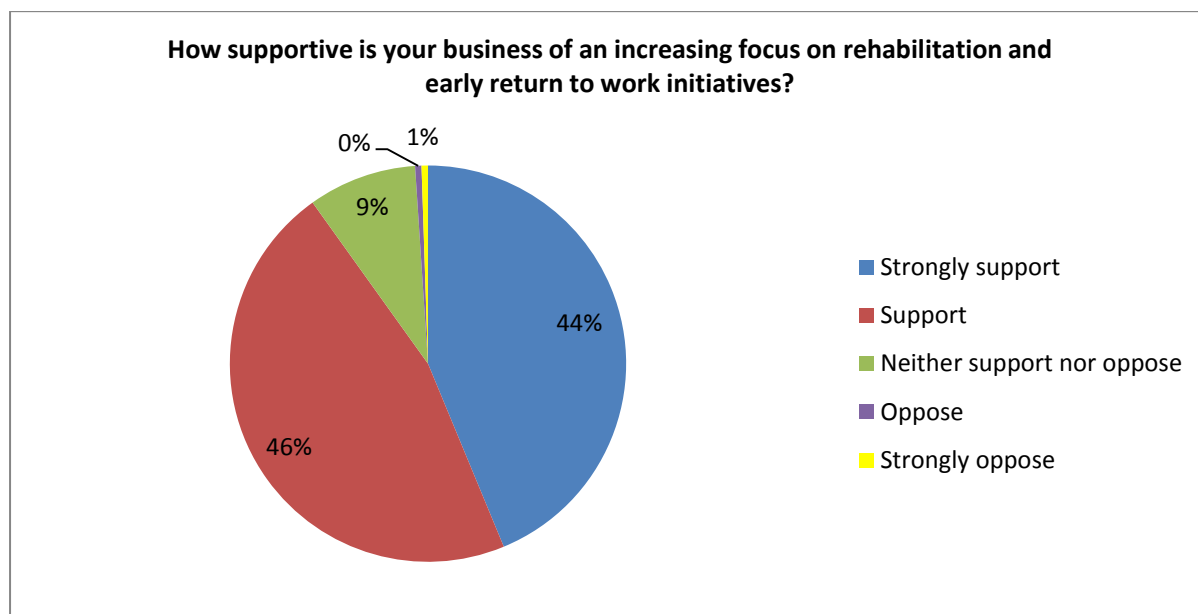
*"There is a need to educate the doctors. We all want the best outcome for the employee. It just makes good business sense."*  
**- Queensland Business**

*"We do not advocate reduced compensation for genuine work-related injuries, but we are very concerned about the trend to medicalise everyday health issues and believe this can, in the near future, lead to severe financial problems for Work Cover. Additionally, the present system seems to make it far too easy for GPs to write up an injury as an LTI rather than working with the employer to return workers ASAP to suitable duties. There have been a number of times that our company has been very disappointed in the decisions of GPs when there was no obvious reason for the worker having days off, except that the GP was obviously receiving more from WorkCover than they would receive from Medicare.*

*There is a need to strengthen obligations on employees to comply with WorkCover directions. "*  
**- Queensland Business**

## **11.0 RETURN TO WORK**

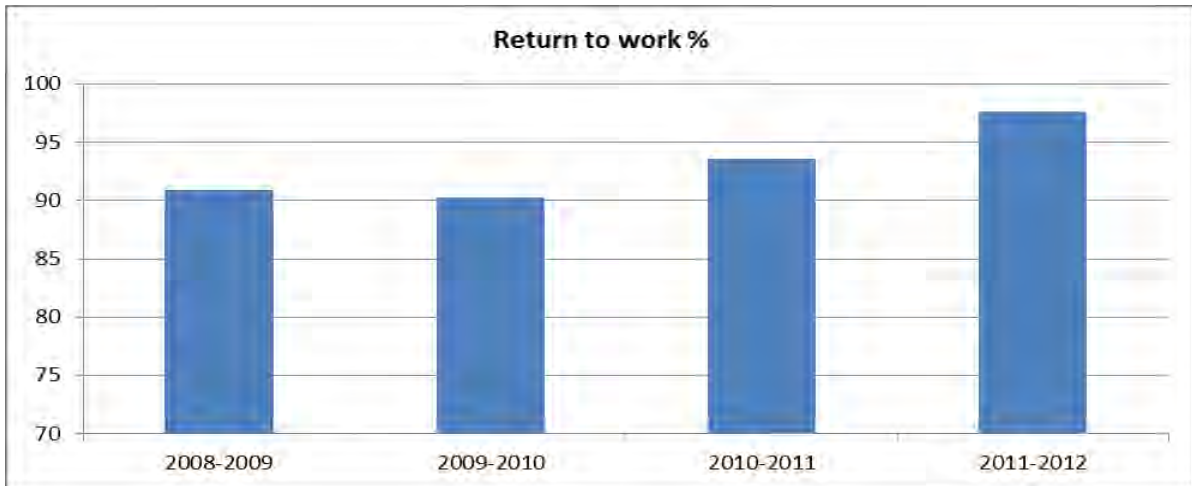
- 11.1 The introduction of Q-COMP's Return to Work Assist program coincides with a gradual increase in return to work numbers since its inception in 2008. The program assists injured workers who no longer have a job at the end of their compensation claim. The 2010 reforms made it mandatory for insurers to refer injured workers to the program, however there is no compulsion for injured workers to participate.



Source: CCIQ Workers Compensation Survey, July 2012

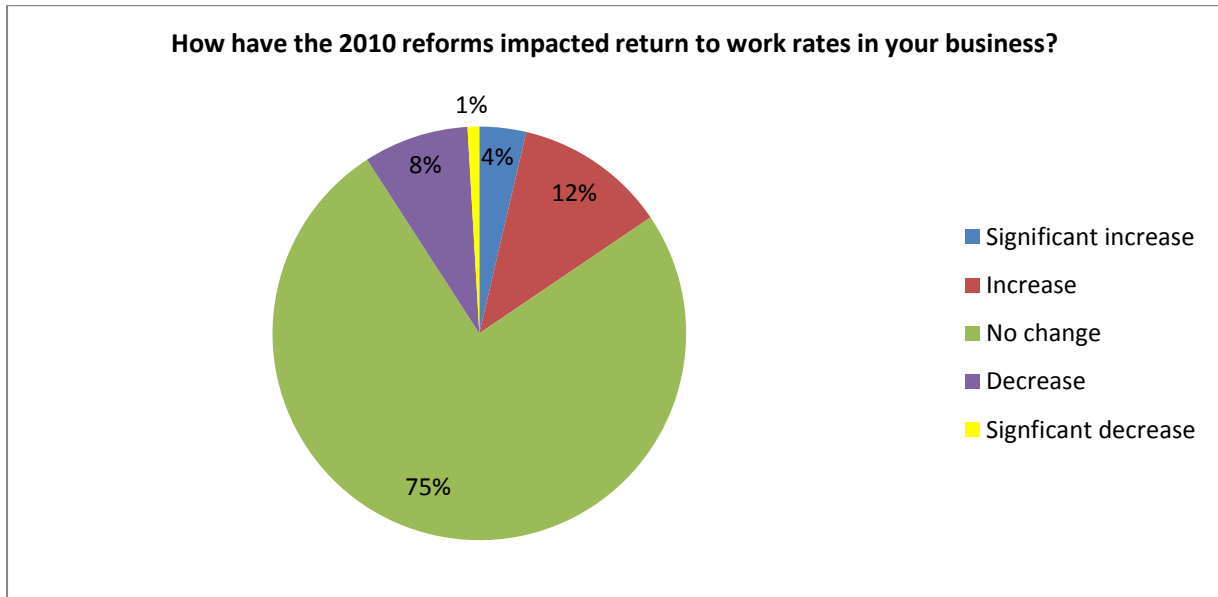
- 11.2 Accordingly, Q-COMP statistics indicate the return to work rate has increased from 93.7 per cent in 2010-11 to 97.1 per cent in 2011-2012 YTD, with the Q-COMP Return to

Work Assist program contributing an additional 1.5 per cent to the return to work rate resulting in a combined rate of 98.6 per cent.<sup>6</sup>



Source: WorkCover 2012

- 11.3 The voluntary nature of Q-COMP's return to work assist program is evidence of the lack of incentive placed on injured workers to return to work following a work-related injury. CCIQ members have indicated that the current scheme lacks any real incentive for employees to return to work, particularly when they are able to access both statutory compensation and common law damages with little encumbrance (depending on the assessed work-related impairment).



Source: CCIQ Workers Compensation Survey, July 2012

- 11.4 The New South Wales workers compensation scheme was recently reformed to include a new requirement for workers to undertake work capacity assessments, pending or in

<sup>6</sup>Q-COMP Queensland Workers' Compensation Scheme Monitoring May 2012, 9.



lieu of their return to work. These assessments require injured workers receiving weekly benefits to undergo an assessment at specified points throughout the life of their claim. They will take into account factors such as medical evidence, vocational retraining and the number of hours a person is able to work.

- 11.5 The results of the assessment are used to determine whether the worker's entitlements to future benefits based on their assessed „work capacity“. Seriously injured workers, whose work-related impairment is assessed as higher than 30 per cent, are exempt.

### **RECOMMENDATION**

CCIQ recommends an increased emphasis on return to work initiatives and seeks the cooperation and collaboration of all stakeholders to achieve this objective.

#### **Quotes from Queensland businesses regarding return to work**

*“The current system too easily allows workers to avoid returning to work. It is too easy for workers to avoid return to work. Some proof should be required of employees that they have genuinely attempted rehabilitation to prepare for returning to work and complied with recommendations to help them recover”*

**- Queensland Business**

*“Permanent Impairment of a certain percentage should trigger consulting with the employer with how to manage the employee out as they are no longer capable of fulfilling the duties of their role, or assist the employee to find work elsewhere where they would be at less risk of re-injury.”*

**- Queensland Business**

## **12.0 DEFINITION OF WORKER**

- 12.1 CCIQ shares the concern of other industry associations that the definition of „worker“ should not be all-encompassing and that it creates confusion as to whether or not contractors and sub-contractors are (or ought to be) covered by workers' compensation insurance.
- 12.2 Excluding contractors and sub-contractors who are covered under their own public liability insurance will harmonise the definition of „worker“ with other comparable legislation, most notably Commonwealth taxation legislation.
- 12.3 Amending this definition would reduce the incidence of contractors and sub-contractors „cross-claiming“ through both workers compensation and public liability insurance for workplace injuries.

### **RECOMMENDATION**

The definition of „worker“ under the Act be harmonised with Commonwealth taxation legislation.

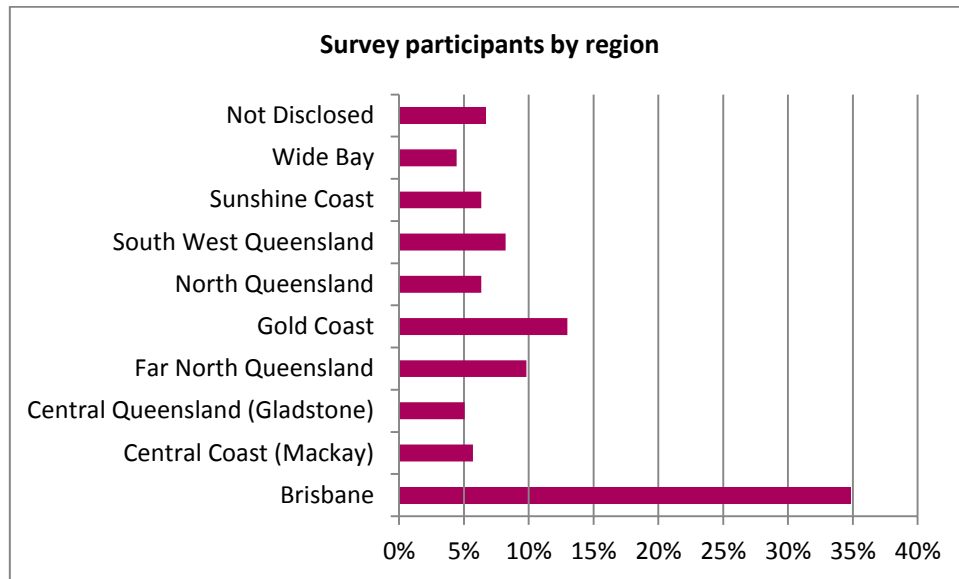
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1. Campbell Research, Return to Work Monitor for 2011-12 for Heads of Workers Compensation Authorities.
2. Department of Justice and Attorney-General, Q-COMP, WorkCover Queensland, Information Paper: Finance and Administration Committee's Inquiry into the operation of Queensland's workers' compensation scheme 2012.
3. Q-COMP Queensland Workers' Compensation Scheme Monitoring May 2012.
4. Safe Work Australia, Comparison of Workers Compensation Arrangements in Australia and New Zealand, March 2011.

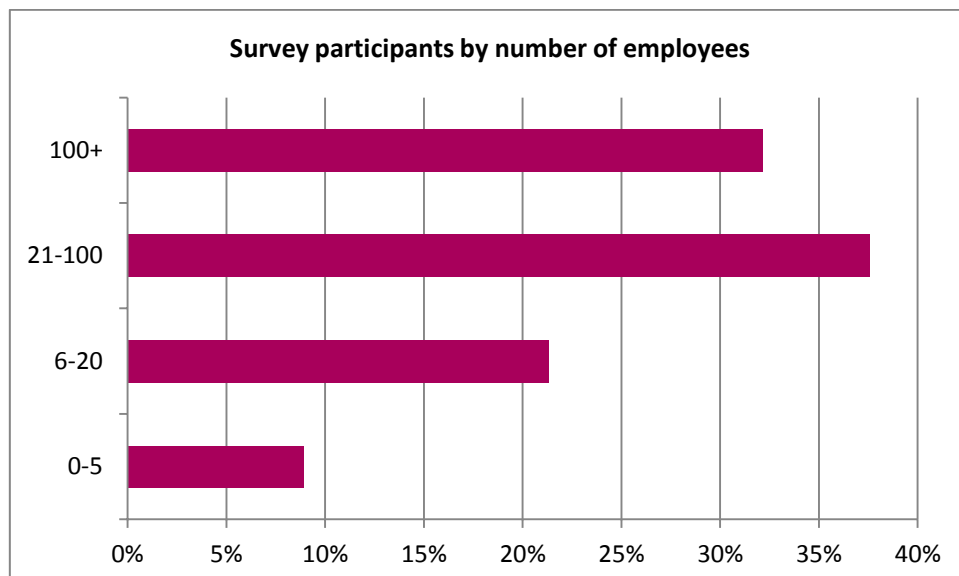
## APPENDIX 1

To represent the views of Queensland business, CCIQ undertook a survey of its members about their experiences and thoughts on Queensland's workers compensation scheme post the 2010 reforms.

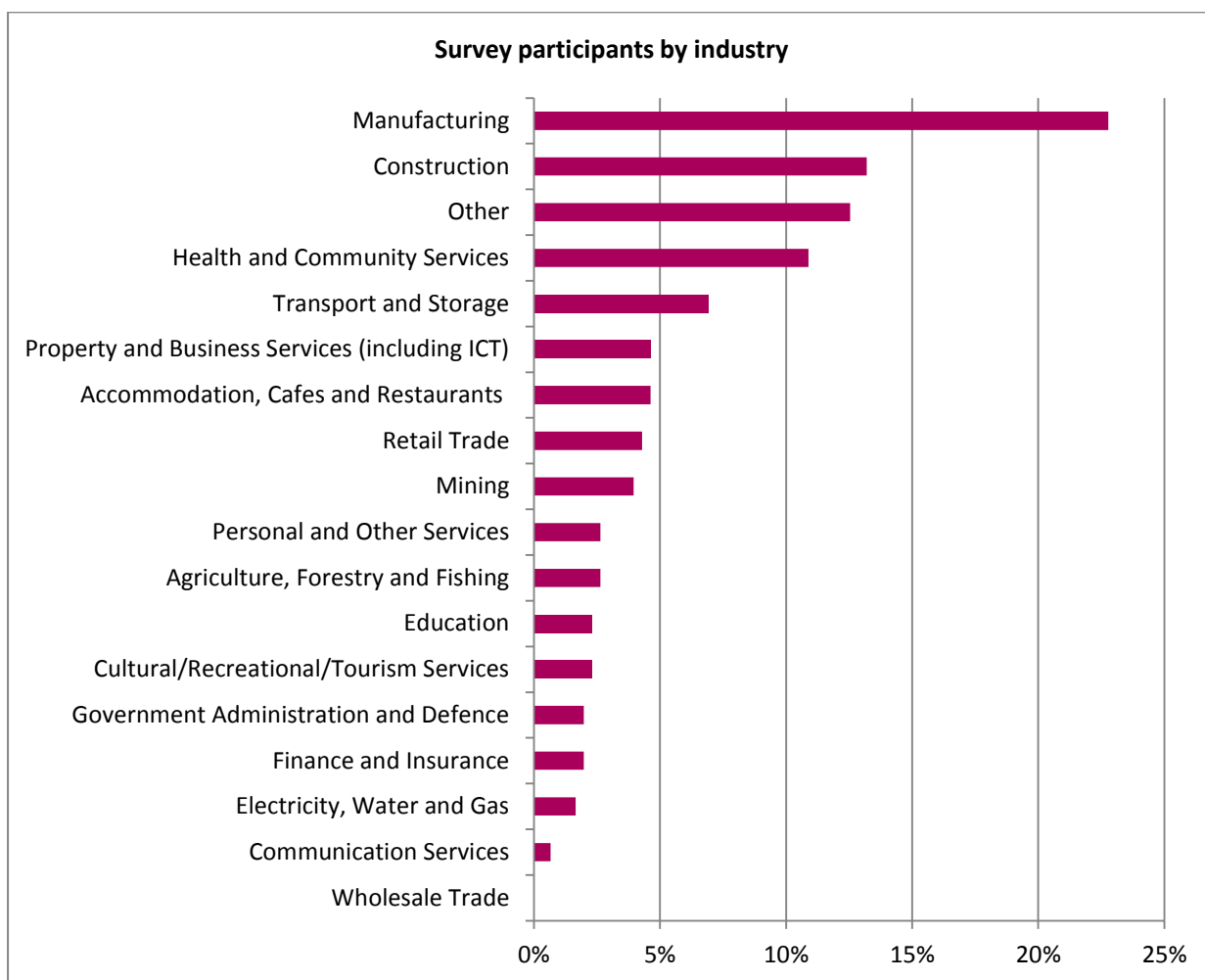
316 responses were received from the survey that was conducted online from Monday 16 July 2012 and closed on Friday 27 July 2012.



Source: CCIQ Workers Compensation Survey, July 2012



Source: CCIQ Workers Compensation Survey, July 2012



Source: CCIQ Workers Compensation Survey, July 2012

## **APPENDIX 2**

CCIQ's 2010 submission to the review into Queensland's Workers' Compensation Scheme is attached herewith.



CHAMBER OF  
COMMERCE &  
INDUSTRY  
QUEENSLAND

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

24 March 2010

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## 1.0 OVERVIEW AND RECOMMENDATIONS

- 1.1 As the State's peak business organisation, the Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to provide feedback to the State Government on the proposed changes to Queensland Workers' Compensation Scheme.
- 1.2 This review provides a great opportunity to not only strive to improve the financial position of WorkCover Queensland, but to deliver overall improvements in Queensland's workers' compensation arrangements, leading to improved outcomes for Queensland employers, employees, WorkCover Queensland, the State Government and the community as a whole.
- 1.3 CCIQ has undertaken an extensive survey of Queensland businesses in order to provide comprehensive and accurate feedback on the scheme, WorkCover's financial position and strategies that are supported by the business community to improve the scheme and the current situation. The survey covered 850 businesses employing more than 45,000 employees across a broad range of industries.
- 1.4 The Chamber is keen to work with the State Government to ensure that the future approach to the workers' compensation scheme delivers fair and equitable outcomes for all stakeholders.
- 1.5 CCIQ recommends:
  - Introducing a 15% Whole Person Impairment (WPI) threshold for accessing common law while maintaining premiums at current levels.
  - The State Government adopting a long term strategy to improve the future outlook of the workers' compensation scheme that ensures Queensland preserves its competitive advantage by maintaining the lowest premium rates in the country thereby protecting investment, employment and business viability.
  - The State Government placing greater emphasis on improving WorkCover's own internal cost structure and management of claims and investments prior to imposing any premium rise on employers.
  - Increased focus to be placed not only on reducing the number of common law claims, but also on reducing the number of new statutory claims introduced. Strategies to achieve this goal should include:
    - Changing the "no-fault" basis of claims to incorporate an obligation on employees to take some responsibility for their own actions;
    - Adopting the guidelines under the Model OHS Act that requires employers to "so far as is reasonably practicable" ensure the health and safety of their employees;
    - Maintain lump sum payments at current levels to ensure these payments are not acting as a greater incentive to make a claim;
    - Introduce an earlier step down in weekly benefits to encourage an early return to work;
    - Placing increasing focus on rehabilitation and return to work initiatives.
  - Immediate action is required to reduce the number of common law claims, including:
    - Bringing the Queensland system in line with other states by introducing a WPI threshold test, placing a cap on the amount of damages that can be awarded and restricting the types of damages that an injured worker can receive;
    - Allowing claims only where employment is the major significant contributing factor to the injury;
    - Increasing employers' ability to defend common law claims which needs to include obligations on employees to be accountable for their own negligent behaviours and placing restrictions on the activities of legal professionals;
    - Focus on those industries with a substantially higher level of common law claims.
  - Increased focus and funds directed towards rehabilitation and return to work initiatives as a method of reducing claim duration and encouraging an earlier return to work.

## 2.0 INTRODUCTION

- 2.1 The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to provide feedback on the proposed changes to the Queensland Workers' Compensation Scheme. The Chamber applauds the adoption of an open and cooperative engagement process, and looks forward to working with Government to ensure the future approach to the scheme delivers fair and equitable outcomes for all stakeholders.
- 2.2 To provide a thorough and considered position on the scheme and the proposed changes, CCIQ undertook a wide-spread survey of Queensland businesses. This submission builds on the 850 responses received and puts forward a number of recommendations that the business community believes should be adopted to improve the scheme's operation moving forward.
- 2.3 CCIQ is the State's largest business organisation. It has a State-wide membership across all industry sectors and of business sizes. In total the Chamber represents in excess of 25,000 businesses - 3,700 members spread across the State with links to 135 local chambers of commerce and 60 industry associations. A full membership profile is attached in Appendix 2.

## 3.0 OVERARCHING COMMENTS

- 3.1 CCIQ is committed to achieving best practice workers' compensation arrangements for the protection and treatment of employers and employees in respect of workplace injuries. This includes maintaining a financially sound WorkCover Queensland that adequately insures employers and employees against genuine work-related injuries, at affordable and competitive premiums.
- 3.2 There is considerable scope to reduce the human and economic losses that arise from injuries at work. In a media release in October 2009, the Minister for Industrial Relations stated that:
  - 82 Queenslanders are absent from work every day due to serious workplace injuries and illness;
  - Every year, 100 Queenslanders die and 30,000 suffer serious work-related injuries;
  - The financial cost of these absences has been estimated at more than \$5.2 billion a year in addition to the cost in human suffering resulting from death or injury.
- 3.3 CCIQ is steadfast in working with the State Government to reduce these statistics, which will have positive flow-on effects on WorkCover claims and associated payouts.
- 3.4 This review provides a significant opportunity to not only strive to improve the financial position of WorkCover Queensland, but to deliver overall improvements in Queensland's workers' compensation arrangements, leading to improved outcomes for Queensland employers, employees, WorkCover Queensland, the State Government and the community as a whole.

## 4.0 THE CURRENT REVIEW

- 4.1 The State Government has highlighted that the current review has arisen following WorkCover's deteriorating financial position. The discussion paper highlights a numbers of factors that have contributed to this position including:
  - Growth in net claims expenditure resulting from an increase in common law claim numbers in comparison to the growth in statutory claim payments and number of claims;
  - Two consecutive years of negative investment returns because of the global financial crisis;
  - Perception of income not keeping pace with net claims growth. Premiums have been kept at an average premium rate of approximately \$1.15 per \$100 of wages paid.
- 4.2 WorkCover's actuary has advised that the workers' compensation fund will fall below its target funding ratio of 120% by 30 June 2010 if no action is taken. PricewaterhouseCoopers has projected the scheme's solvency based on the experience to December 2009 to fall below 100% by June 2011, primarily due to the higher number of common law cases.

- 4.3 A number of changes are being proposed to return WorkCover's financial position into more positive territory. The recommendations put forward by WorkCover's Board include:
- Progressive increases over time in the average premium rate;
  - Introducing a common law threshold of 10% or 15% whole person impairment (WPI) while at the same time extending common law coverage to host employers and principal contractors who have a WorkCover policy;
  - Increasing statutory lump sums and improving rehabilitation and return to work processes;
  - Reducing the step down in weekly benefits between weeks 14 to 26 from 85% of normal weekly earnings to 80% or the federal minimum wage, and increasing step down benefits between 14 weeks and 5 years from 75% to 80% of normal weekly earnings or the federal minimum wage.
- 4.4 CCIQ has undertaken an extensive survey of businesses in order to gather feedback on the workers' compensation scheme, WorkCover's financial position, and strategies that are supported by the business community to improve the scheme and the current situation. The survey covered 850 businesses employing more than 45,000 employees working in a broad range of industries.

## 5.0 CURRENT QUEENSLAND ECONOMY

- 5.1 CCIQ's submission is being written at a time of dramatically altered economic conditions. Businesses have experienced difficult trading conditions over the last 12 months and need time to rebuild capital and to return to profitability. It is important to note that many businesses have endured substantially reduced profitability and even losses in order to retain existing staff during the downturn. CCIQ is overwhelmingly of the view that the Queensland economy is not experiencing the same level of economic recovery that is occurring elsewhere in Australia.
- 5.2 That being said the Queensland economy does commence 2010 in much better shape compared to its depressed starting point a year earlier. Business confidence is on the rise but nevertheless, actual business indicators such as sales and profitability continue to fall short of expectations.
- 5.3 It is concerning that the Queensland economy has not shown the same continued improvements occurring nationally, and that there is a disconnection between confidence and actual business performance and a divergence between expectations and actuality. A more detailed economic picture is provide in Appendix 1 of this submission and is sourced from the Commonwealth Bank CCIQ Survey of Business Conditions for the December Quarter 2009. By way of background CCIQ's Pulse Survey has been measuring Queensland business confidence and expectations for over 20 years and is regarded as an extremely accurate reflection of the Queensland business sentiment.
- 5.4 State final demand and labour market numbers also paint a worrying picture of Queensland not experiencing the same level of economic recovery as occurring nationally.

State Final Demand – Chain Volume Measures				
	Trend		Seasonally Adjusted	
	% change Sep 09 – Dec 09	% change Dec 08 – Dec 09	% change Sep 09 – Dec 09	% change Dec 08 – Dec 09
NSW	1.6	4.3	2.4	5.2
VIC	1.8	4.1	3.0	4.0
QLD	0.5	-1.3	1.3	-1.1
SA	1.2	4.1	0.6	5.0
WA	1.4	3.4	2.6	3.3
TAS	0.7	-0.4	1.8	-0.3
AUS	1.4	2.8	2.0	3.3

Source: ABS Catalogue 5206.0

Unemployment Rates										
	Trend					Seasonally Adjusted				
	Feb 09	Jan 10	Feb 10	% Δ Jan 10 – Feb 10	% Δ Feb 09 – Feb 10	Feb 09	Jan 10	Feb 10	% Δ Jan 10 – Feb 10	% Δ Feb 09 – Feb 10
NSW	6.0	5.6	5.6	0.0	-0.4	6.1	5.6	5.4	-0.2	-0.7
VIC	5.4	5.3	5.2	-0.1	-0.2	5.6	5.3	5.3	0.0	-0.3
QLD	4.6	5.8	5.7	-0.1	1.1	4.6	5.5	5.7	0.2	1.1
SA	5.7	4.9	4.7	-0.2	-1.0	5.8	4.4	4.7	0.3	-1.1
WA	4.1	5.0	5.0	0.0	0.9	4.2	5.0	5.0	0.0	0.8
TAS	4.9	5.7	5.8	0.1	0.9	4.4	5.3	6.4	1.1	2.0
AUS	5.3	5.6	5.5	-0.1	0.2	5.5	5.4	5.5	0.1	0.0

Source : ABS Catalogue 6202.0

5.5 In the context of this review and the current economic environment, we can no longer think of the Queensland business community as a funding source to solve problems.

## 5.6 Competitive business operating environment

5.6.1 CCIQ recognises the vital role that a competitive business operating environment plays in building and sustaining the Queensland economy. Creating a strong business operating environment that allows local industries to compete globally is pivotal to the economic well-being of Queensland. Queensland's low workers' compensation premiums are central element in our State's efforts to keep our business operating environment competitive.

5.6.2 Every region in Australia is in competition with each other to some extent in the area of investment attraction through competitive business cost regimes. Having a once competitive advantage is no reason to be complacent. In those areas that are within our control, our target must be the best in every aspect affecting the business operating environment. Queensland needs to have a business operating environment that is the most competitive. Business in the State is facing increasingly tough competition not only from domestic markets but from overseas.

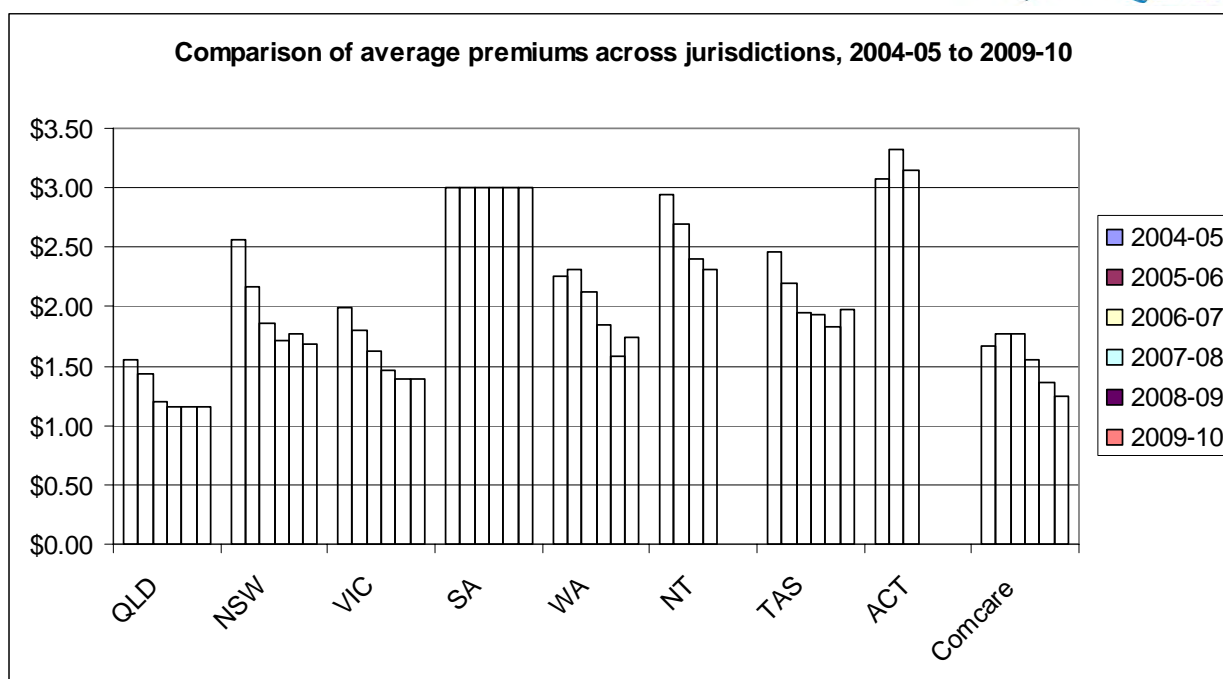
5.6.3 If Queensland workers' compensation premiums rise then our attractiveness will be diminished in the eyes of potential and existing investors.

## 6.0 WORKCOVER PREMIUMS

6.1 Queensland currently has the lowest average premium rate of any state or territory in Australia, and has held this sustainable competitive advantage for at least the last 5 years.

6.2 Queensland's average premium rate has remained at \$1.15 per \$100 of wages paid for the past three years. The only other state or territory to maintain premium rates at the same level for any period of time over the last five years has been SA with an average premium of \$3.00 (161% higher than Queensland's average). Victoria has the second lowest premium, with an average rate of \$1.39 per \$100 of wages paid (21% higher than Queensland). Comcare, the workers' compensation insurer for the Australian Government, had an average premium rate of \$1.25 per \$100 of wages paid in 2009-10 (9% higher than Queensland's average rate).

6.3 CCIQ is overwhelmingly of the view that Queensland's competitive workers' compensation premium has promoted employment, investment and an overall level of economic activity commensurate with the State's "low tax" status.



Source: DJAG Discussion Paper The Queensland Workers' Compensation Scheme, February 2010

- 6.4 Although the average WorkCover premium is currently \$1.15 per \$100 of wages paid, it is important to note that many businesses currently pay substantially higher premiums for their employees. More than 40% of survey respondents indicated their WorkCover premiums were higher than \$2 per \$100 of wages paid. It is essential to take into consideration the fact that any increase in premiums will have a significantly higher impact on these businesses.

Premium per \$100 of wages paid in 2008 09	Percentage of employers
Less than \$0.99	32.3%
Between \$1 and \$1.29	5.3%
Between \$1.30 and \$1.99	19.9%
Between \$2 and \$2.99	21.1%
Higher than \$3	21.4%
<b>TOTAL</b>	<b>100.0%</b>

Source: CCIQ Workers' Compensation survey, March 2010

- 6.5 Further to this, based on the survey responses, an increase in the average premium rate of \$1.15 to \$1.25 (a 8.7% increase) would on average increase businesses' workers' compensation bill by \$7,542/yr.
- 6.6 Understandably, the level of WorkCover's premiums are of key concern to Queensland businesses, and therefore, businesses are generally not supportive of WorkCover improving their financial position by increasing their income through progressively increasing the premiums paid by employers.
- 6.7 More than 60% of businesses indicate that a 5-10% increase in the current worker's compensation premium (ie average premium increase to \$1.21 to \$1.27 per \$100 of wages paid) would have a negative impact on employment, profitability and investment. This would increase to more than 80% of employers for an increase of between 10 and 20% (\$1.27 to \$1.38). Refer to the table on page 8.
- 6.8 It is essential for the State Government to consider whether substantially increasing premiums to better position WorkCover Queensland in the marketplace, is worth the negative implications for employment and investment by businesses in metropolitan and regional Queensland.



### Impact of Premium Increase on Employers\*

	0-5%	5-10%	10-20%	20-30%	30-50%	50-100%	>100%
Employment	31% (31%)	31% (62%)	20% (82%)	9% (91%)	4% (95%)	3% (98%)	2% (100%)
Profitability	39% (39%)	29% (68%)	15% (83%)	6% (89%)	6% (95%)	3% (98%)	2% (100%)
Investment	36% (36%)	29% (65%)	17% (82%)	8% (90%)	4% (94%)	3% (97%)	3% (100%)

\* % of employers identifying specific % range as trigger point

Legend:

Premium Increase has

little impact

medium impact

major impact

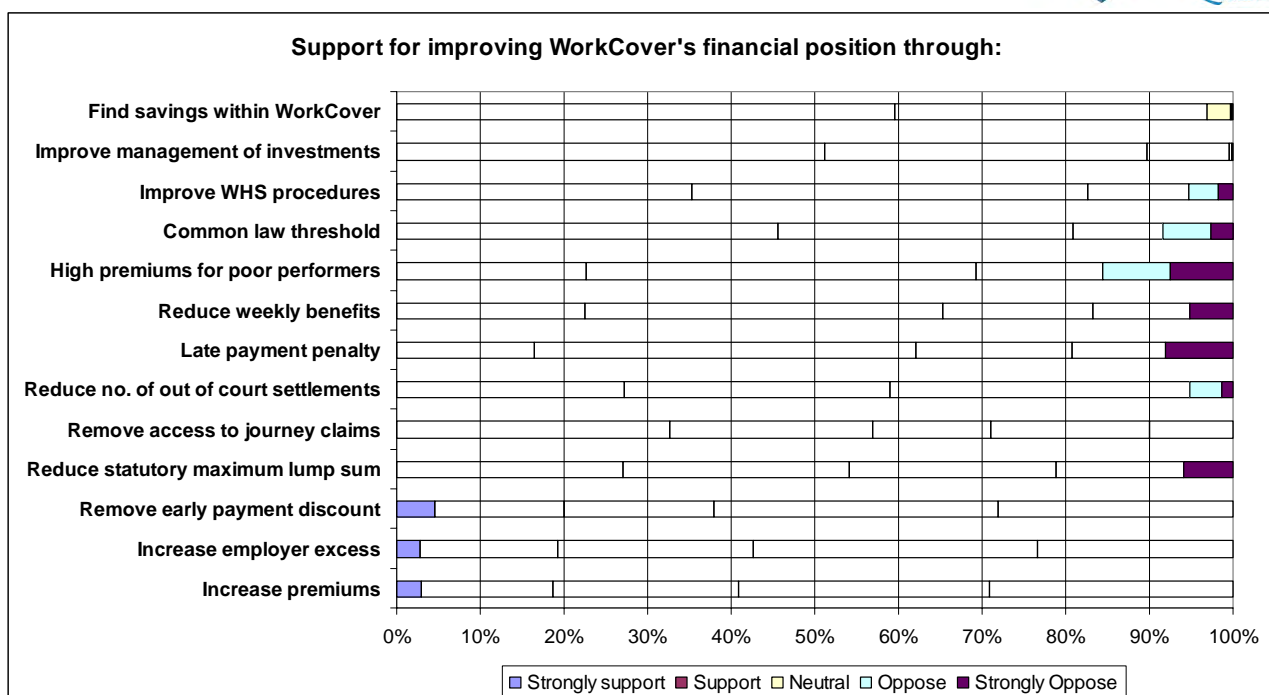
Source: CCIQ Workers' Compensation survey, March 2010

### Recommendation

The State Government needs to adopt a long term strategy to improve the future outlook of the workers' compensation scheme that ensures Queensland preserves its competitive advantage by maintaining the lowest premium rates in the country thereby protecting investment, employment and business viability.

## 7.0 QUEENSLAND BUSINESS VIEWS REGARDING WORKCOVER'S FINANCIAL POSITION

- 7.1 Many Queensland businesses stress the importance of WorkCover improving its own internal cost structure and management of claims and investments prior to imposing any premium rise on employers.
- 7.2 There is wide-spread discontent regarding inaction over the past two years to improve the outlook of WorkCover's current situation. Questions have been asked about who is accountable for WorkCover's current position and why nothing has been done to date. Many feel that as the GFC has impacted on all businesses, it would be unfair for WorkCover to increase premiums (obtaining more money from already struggling businesses – see section 6.0) in order to improve their own financial position (above 120% funding) without placing any emphasis on improving their own internal cost structure and management of investments. CCIQ has noted an absence of benchmarking data to gauge the performance of WorkCover's investment strategies. This needs to be considered in order to arrive at an appropriate package of solutions and recommendations.
- 7.3 There is strong support from businesses for WorkCover improving its financial position by:
- Finding savings by achieving efficiencies within its own cost structures;
  - Improving management of WorkCover's investment portfolios;
  - Increasing focus on improving employer WHS procedures, therefore reducing claims;
  - Introducing a common law threshold to reduce the number of claims, subsequently reducing claims expenditure;
  - Higher premiums for employers with a high number of claims;
  - Reducing the step down in weekly benefits ie from 85% to 80% of normal weekly earnings or the federal minimum wage;
  - Introducing a late premium payment penalty fee;
  - Less propensity for WorkCover to settle common law claims;
  - Removing access to journey claims;
  - Reducing the maximum lump sum payment for statutory claims.
- 7.4 Queensland businesses are not supportive of WorkCover improving its financial position by:
- Progressively increasing premiums over time;
  - Increasing the excess paid by employers for statutory claims; or
  - Removing the premium discount received for early payment.



Source: CCIQ Workers' Compensation survey, March 2010

7.5 Queensland businesses commonly express concerns over the perceived level of fraudulent and exaggerated claims that are accepted by WorkCover and pushed through the system. There is a strong belief that altering WorkCover's current *modus operandi* would go a long way towards improving their financial position. Supported changes include:

- Improving the management of all claims;
- Increasing investigation on claims rather than simply rushing them through the system;
- A clear focus on reducing the number of fraudulent/exaggerated claims and serial claimants;
- Allowing employers to tell their side of the story and defend themselves;
- Increasing focus on rehabilitation of employees to ensure they return to work as soon as possible, reducing the time they are on benefits;
- Considering the time that employees have been with the employer.

7.6 Businesses often comment on large payouts in some cases that do not appear justified, such as payouts for skin cancers that develop over many years. Changing the definition of injury to encompass work as the major contributing factor is widely supported. Many employers also believe that employees should be held partly accountable for their own behaviours, and not be eligible for workers' compensation payments if their injuries arose from ignoring the safety procedures and systems put in place by employers.

7.7 An analysis of the underwriting expenses of WorkCover found that a significant amount of funding is currently directed to Q-COMP. In 2008-09, WorkCover's Q-COMP levy was \$51.1 million, up 11.2% from 2007-08. This levy represented 84% of Q-COMP's income in the last financial year. Queensland employers are asking serious questions about whether their premiums should be used to fund the regulator of Queensland's workers' compensation scheme, particularly as the State Government is currently not contributing any funding towards this cause.

7.8 Other suggestions by businesses to improve WorkCover's financial position include:

- Changing the "no-fault" basis for making claims;
- Ensuring consistency and accountability amongst health professionals regarding WorkCover claims (currently different doctors approve differing amounts of time off work for similar injuries). One potential solution is for WorkCover to appoint their own health professionals to ensure consistency and a certain standard regarding the accessing of all claim injuries;
- Stronger penalties for those found to be making fraudulent or exaggerated claims;
- Making it easier for businesses to be a self insurer;
- Streamlining administration processes.



### **Recommendation**

State Government to place greater emphasis on improving WorkCover's own internal cost structure and management of claims and investments prior to imposing any premium rise on employers.

### **Quotes from businesses regarding WorkCover's financial position**

"Acceptance of every claim on a no fault basis is why WorkCover are in this position. We as a large employer must prove that the incident or injury did not occur in order for the claim to be rejected. If an employee finds a sympathetic Dr the claim is accepted no matter what evidence is produced to the contrary."

"The degree to which workers are responsible for their own mistakes within the WorkCover framework is a joke. WorkCover and the judicial system need to get real about how much money they throw around to people who hurt themselves through their own negligence. They paid a woman who hurt her hand on my premises \$80,000 when it was completely caused by her negligence. This was on top of having the hand fixed and being repatriated to the workforce. As well as bumping my premium \$5,000 per year. Any wonder they are broke, and they are going to take me with them!"

"Employers already pay enough and WorkCover are renowned for just approving claims which should require further investigation as to the validity of the claims. Employees should be forced to take some responsibility for their sometimes very irresponsible actions."

"Absolutely no need to increase premiums - The Workers Compensation fund should be able to do what everybody else in business does and that is manage their affairs appropriately. To increase fees is to increase incompetence, and malingering."

## **8.0 STATUTORY CLAIMS**

8.1 Currently, statutory claims account for 96% of all claims. In 2008-09 there were 92,390 new statutory claims introduced, however despite a 0.6% reduction from the previous year, there was a 11.3% increase in statutory payments (from \$545.9 million to \$607.4 million). Over the past five years, WorkCover has experienced (in relation to statutory claims) an increase in:

- The number of new statutory claims introduced (24.5%);
- Statutory claim payments (86.2%);
- The overall level of weekly compensation payments (63.1%);
- Medical and rehabilitation costs (109.1%);
- Lump sum payouts (72.7%);
- Hospital payments (406.9%);
- Travel claims (69.2%).

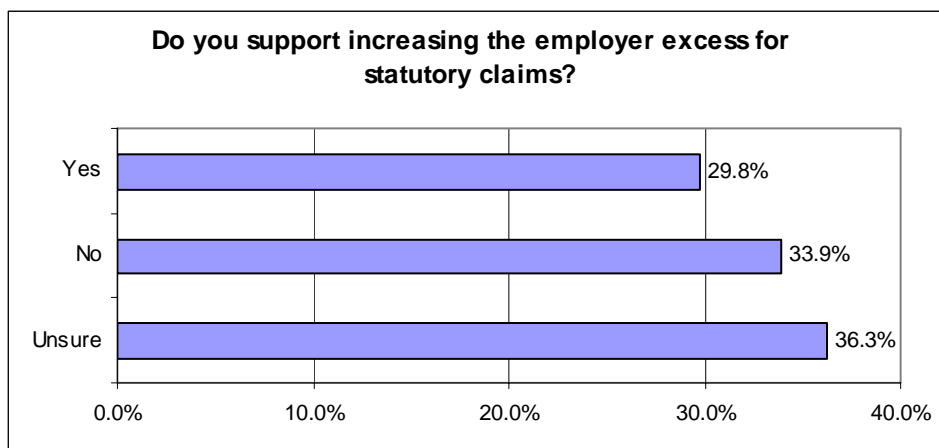
8.2 Employers strongly support changing the no-fault basis for making claims, particularly to ensure employees take some responsibility and accountability for their own actions or negligent behaviours. Employers should only be required to "so far as is reasonably practicable" ensure the health and safety of their employees, as adopted under the Model OHS Act. Embracing a "no-fault" basis of claims opens the system up for abuse and encourages a high number of claims. Maintaining the status quo is likely to lead to increasing numbers of statutory claims being made overtime (particularly if a WPI threshold is introduced for access to common law).

### **8.3 Statutory lump sum payments**

One recommendations put forward by WorkCover's Board is to increase the statutory lump sum payments to \$300,000. Due to only 25.7% of businesses expressing support for an increase, coupled with WorkCover's current financial position and the increasing number of claims and payouts, CCIQ does not support the immediate adoption of this recommendation. Prior to increasing gross statutory payments, it is essential to firstly improve WorkCover's financial position. This recommendation should be explored in the future when improvements in WorkCover's financial position are realised.

## 8.4 Employer excess

An alternative option includes increasing the employer excess, as an incentive for injury prevention by placing increased upfront costs on employers for any compensable injuries sustained by workers. Businesses are not supportive of increasing the employer excess for statutory claims, rather believe a greater focus should be placed on reducing the overall number of claims, and therefore reduce the overall costs associated with the scheme.



Source: CCIQ Workers' Compensation survey, March 2010

## 8.5 Weekly benefits

CCIQ is supportive of changing weekly benefits, particularly an earlier step down from week 13. The Chamber supports the proposal put forward by WorkCover to bring forward the step down in weekly benefits from week 13 to the greater of the federal minimum wage (FMW) or 80% of normal weekly earnings (NWE). However, CCIQ is not supportive of maintaining this level up to the end of the maximum 5 years, rather that a similar step down in benefits occur after week 26 as currently, with weekly benefits to be the greater of the FMW or 75% of NWE. After 2 years, if the work related impairment is less than 15%, the single pension rate should apply unless the injury is stable and stationary.

Current and proposed step down in weekly benefits						
Duration		Current (greater of)		WorkCover Proposal (greater of)		CCIQ Proposal (greater of)
0-13 wks		100% award or agreement	85% NWE	100% award or agreement	85% NWE	100% award or agreement
14-26 wks				FMW	80% NWE	FMW
26 wks-2 yrs		70% QOTE	75% NWE			FMW
2-5 yrs	WRI > 15%					
	WRI <15%	Single Disability Support Pension rate				Single Disability Support Pension rate

8.6 CCIQ supports the rationale put forward in the discussion paper that an earlier step down in weekly benefits be adopted to encourage an earlier return to work, particularly as the majority of compensable injuries are resolved within the three month time frame (0 to 13 weeks) in any case. CCIQ is not supportive of increasing the weekly benefits from week 14 to 5 years, as this may provide an incentive for workers to stay on weekly compensation longer than necessary.

## 8.7 Additional return to work measures

CCIQ is supportive of placing increasing focus on rehabilitation and return to work initiatives as a method of reducing claim duration and encouraging an earlier return to work. More detail on CCIQ's position in relation to the rehabilitation of injured workers can be found in Section 10.0.

## Recommendation

Increased focus to be placed not only on reducing the number of common law claims, but also on reducing the number of new statutory claims introduced. Strategies to achieve this goal should include:

- Changing the “no-fault” basis of claims to incorporate an obligation on employees to take some responsibility for their own actions;
- Adopting the guidelines under the Model OHS Act that requires employers to “so far as is reasonably practicable” ensure the health and safety of their employees;
- Maintain lump sum payments at current levels to ensure these payments are not acting as a greater incentive to make a claim;
- Introduce an earlier step down in weekly benefits to encourage an early return to work;
- Placing increasing focus on rehabilitation and return to work initiatives.

## 9.0 COMMON LAW CLAIMS

9.1 A key concern of employers is the increasing numbers of common law claims and their associated impact on the viability of the workers’ compensation scheme. Over the past year, common law payments have increased by 20.3% and currently account for 39.5% of total gross WorkCover payments (\$395.9 million). This is particularly concerning when taking into consideration the fact that common law claims only account for 4% of all WorkCover claims (3,653 claims in 2008-09).

9.2 Over the past five years, WorkCover has experienced a 44.3% increase in gross common law payouts, a 52.3% increase in out of court settlement costs and a 203.3% increase in outlays for defendants. Currently, the average cost of a common law damages claim settlement (\$146,811 in 2008-09) is around 30 times higher than the average cost of a statutory claim (\$5,181 in 2008-09).

9.3 The most significant increase in common law claims over recent years has occurred in the lower levels of WPI. Common law claims in the injury bands of 0-10% WPI accounted for 66% of common law claims and around \$233 million or 41.1% of all common law claim payments in 2008-09.

### 9.4 Factors contributing to the growth in common law claims

WorkCover identified a key factor contributing to the growth in common law claims and costs was the increasing level of damages paid that are on average significantly higher than statutory compensation. This makes common law more attractive, resulting in increased activity, increased costs and possibly more opportunistic claims specifically for minor injuries. Furthermore, more claims are now meeting the test of proving employer negligence, particularly as a result of recent court rulings (*Bourk v Powerserve* and *Parry v Woolworths*).

9.5 Queensland businesses strongly believe that increased solicitor involvement and engagement is significantly influencing the increasing number of common law claims. In particular “no win no fee” advertising, aggressive action by lawyers that encourage workers to make a claim even for minor injuries and the sheer number of lawyers profiting from the current scheme are of key concern.

9.6 Businesses also believe the following have contributed to the current situation:

- The growing culture in Australia of “suing” people;
- The perception that common law claims are “easy money”, with easy access and little proof required in order to succeed;
- WorkCover’s reputation of settling quickly out of court, undertaking limited investigations and dismissing few cases;
- Poor employment prospects and financial hardships, especially during the GFC;
- The experience of others and word of mouth is encouraging more claims;
- Increased awareness of the option to claim;
- The perception that it is easy to fake or exaggerate injuries, which will not be investigated or identified by WorkCover;
- Lack of safety standards and training in some workplaces linked with time poor managers;

- Claims being accepted for injuries that occur outside of the workplace;
- The aging population and general deterioration in population health (ie increasing obesity);
- Skill shortages meaning more people are taking on jobs outside of their skill sets and training;
- Increased health costs encouraging more people to seek compensation to help cover costs;
- Employees are unaware of the cost of WorkCover premiums and the associated impact on salary levels.

**Quotes from businesses regarding growth in common law claims**

"Too many people are winning significant payouts from claims that shouldn't be allowed. This is influenced by the 'no win no pay' style of lawyers - they have nothing to lose and WorkCover/employer foot the bill."

"Claimants seem to be fed a lot of information in the public arena that makes them feel that it is not only their right, but that they will most likely succeed."

"Failure by WorkCover to accurately and adequately assess claims at the decision stage e.g assessment of aggravation of pre existing conditions, gathering sufficient information to accurately attribute liability."

"WorkCover never fight them. Everyone knows that if you commence an action, you will get a payout. A common law case manager once told me that she would have to pay a worker if they "could turn up and spell their name correctly" before she had even seen the case. On another occasion, we had a claim settle for a significant amount even after his own specialist gave him 0% WRI and said his future earning capacity was undiminished, and he required no further treatment. The explanation was that we must settle on a commercial basis or he will get more if we defend it."

"Because the system favours employees and the employer is always found in the wrong. It doesn't matter if an injury was self inflicted or aggravated by the employee no defence an employer can come up with will be accepted by the courts. WorkCover on most cases refuse to take any matters to court and prefer to resolve outside of court with lump sum payments. [Employees] tell their friends [and the] cycle continues."

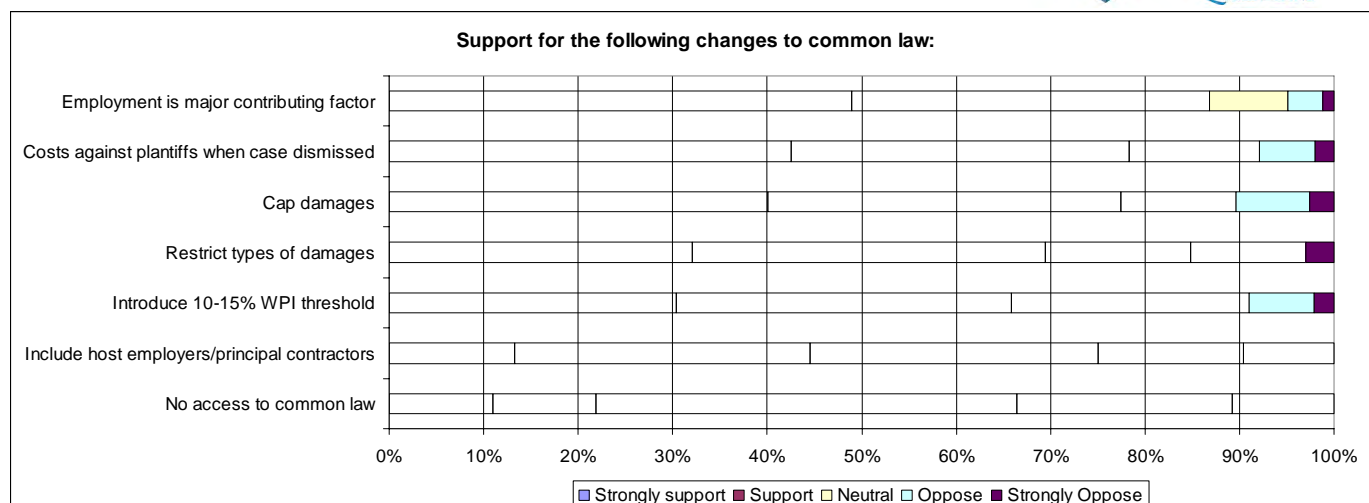
## 9.7 Reducing access to and the cost of common law claims

Businesses are strongly supportive of access to common law and compensation for employees who are genuinely injured through a work related injury. However, many employers believe that the current system is being exploited, with the majority of common law claims for minor injuries only, in addition to the many fraudulent and exaggerated claims that successfully make their way through the system. Employers believe that a more targeted approach is required to ensure genuine claims for those employees with serious injuries are appropriately managed with strategies put in place to reduce the number of new common law claims.

9.8 Currently, Queensland and the ACT are the only jurisdictions that provide unlimited access to common law (no threshold test), no cap on the amount of damages that can be awarded and limited restrictions on the types of damages that an injured worker can receive. Queensland employers are strongly supportive of reducing employees' access to common law claims in line with other states, however are not supportive of restricting access altogether.

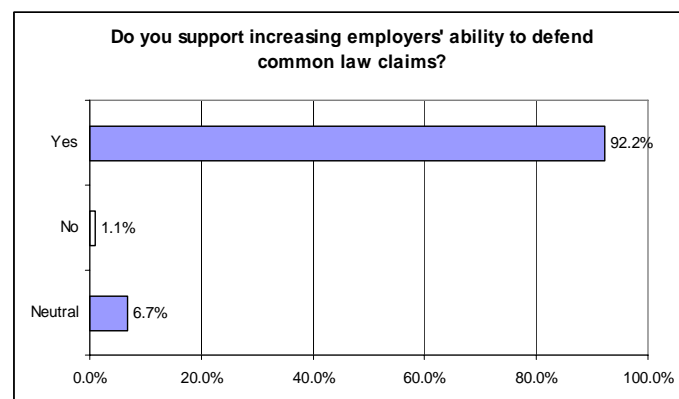
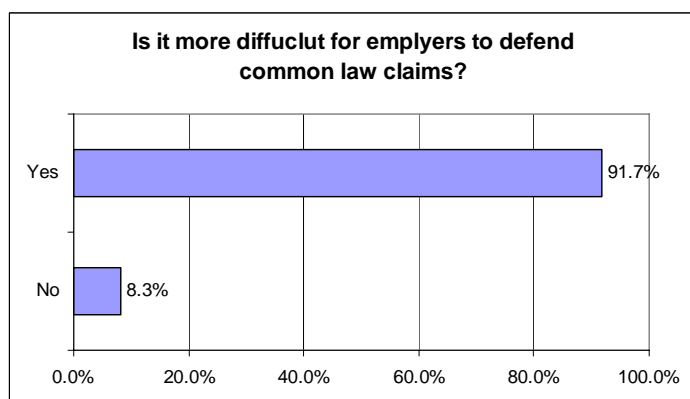
9.9 Strategies that are supported by the business community to reduce access to and the cost of common law claims include:

- Allowing claims only where employment is the major significant contributing factor to the injury;
- Allow courts to award costs against plaintiffs whose claims are dismissed;
- Placing a cap on the amount of damages that can be awarded;
- Restrictions on the types of damages that an injured worker can receive;
- Introduce a threshold, such as 10 or 15% WPI to access common law.



## 9.10 Increasing employers' ability to defend common law claims

91.7% of businesses believe it has become significantly more difficult for employers to defend common law claims. There is strong support for increasing employers' ability to defend themselves.



Source: CCIQ Workers' Compensation survey, March 2010

9.11 Businesses were asked what could be done to enhance the ability of employers to defend common law claims. As mentioned earlier, businesses are supportive of adopting strong penalties to deter fraudulent or exaggerated injuries being claimed, changing the law to require employers to only be required to do what is "reasonably practicable" to ensure the health and safety of employees and ensuring consistency and accountability amongst health professionals.

9.12 Other strategies that are supported include:

- Higher obligations on employees to be accountable for their own behaviour, with implications for accessing, and for the level of payouts that can be attained through, common law claims;
- Not settling cases too quickly;
- Improved claims management incorporating more support for and involvement by employers and enhanced focus on investigatory activities particularly to determine the validity of claims, negligence on the employee's behalf and pre-existing or aggravated injuries;
- Allowing employers to respond to claims and involving them in the decision making process;
- Place an obligation on the employee to prove the employer was negligent by not ensuring their health and safety in the workplace;
- Increase the level of communication and information/advice for employers;
- Allow employers to undertake their own investigations and hire their own lawyers.

9.13 Employers are also strongly supportive of placing restrictions around the activities of legal professionals including the level of fees they can charge clients and the level of advertising.



## 9.14 Other issues requiring consideration

**9.14.1 Industries with a high number of claims:** Instead of only adopting a blanket approach, it is also important to place increased focus on those industries that have a significantly higher level of common law claims in order to reduce overall claim levels. PricewaterhouseCoopers provided an analysis of common law claims by industry which showed the top 5 industries in relation to the number of claims made in 2008 to be:

- Manufacturing (around 900 claims);
- Construction industry (around 525 claims);
- Health and community services (around 380 claims);
- Retail trade (around 350 claims);
- Transport and storage (around 280 claims).

Increased focus on reducing the number of claims in these industries is essential moving forward.

**9.14.2 Adoption of the terminology “Whole Person Impairment”:** CCIQ is supportive of WorkCover's proposal to move to a WPI methodology of calculating impairment for both common law and statutory claims as this will bring Queensland in line with other states.

**9.14.3 Extending common law coverage to host employers and principal contractors:** Businesses are undecided on whether common law coverage should be extended to host employers and principal contractors who have a WorkCover policy.

### **Recommendation**

Immediate action is required to reduce the number of common law claims, including:

- Bringing the Queensland system in line with other states by introducing a WPI threshold test, placing a cap on the amount of damages that can be awarded and restricting the types of damages that an injured worker can receive;
- Allowing claims only where employment is the major significant contributing factor to the injury;
- Increasing employers' ability to defend common law claims which needs to include obligations on employees to be accountable for their own negligent behaviours and placing restrictions on the activities of legal professionals;
- Focusing on those industries with a substantially higher level of common law claims.

### **Quotes from businesses regarding common law claims and payouts**

“Change the laws which are so biased against employers. Reputable employers have an impossible task of abiding by the laws as they are written. WorkCover accepts every claim. By WorkCover accepting every claim the employer is always deemed to be responsible and have done something wrong. All responsibility on employer and no responsibility on employee. It should be proven that the employer has been negligent in some way. It should be determined whether the employer has taken fair and reasonable steps to ensure a safe workplace and then the employee's role of compliance to procedures.”

“I have sat in a WorkCover conference where evidence was presented to discredit the injured worker, and prove that he had acted with negligence, and he still walked away with a substantial sum. It was like playing poker with someone else's money. Everyone in that room knew he would walk away with money, and they had all pretty much agreed where the final figure would stand even before the meeting. The employer seems to have little say or rights in the proceedings.”

“I think employees with pre-existing conditions have a responsibility to divulge this to employers and have a responsibility under OHS to ensure they do not place themselves at further risk because of pre-existing conditions. Employers should not be responsible for injuries that have aggravated existing conditions it can be proven the employers is at fault by directing or placing the employee at greater risk.”

“The employer must be actively involved in the common law decision process. I am sure many employers would spend the money to defend bogus claims to ensure to stem the flow.”

“Start putting the responsibility back on workers & make them accountable for their own actions particularly if it is their own stupidity or ignorance of instruction or rules that has resulted in their injury. If the employer has not done the right thing then make them pay. But stop making employers pay when everything they have done & put in place to prevent an injury has

been ignored or bypassed. We are living in a world gone mad. We have created an entire society that believes everything that happens to them is someone else's fault. Start creating a set of rules & a court system that says that at some point the person who got injured did the wrong thing & that they have to bear some part of the responsibility & cost."

"A number of our employees don't seem to care about their own personal safety or the safety of those around them...We tell them again and again, but they still won't [follow instructions]. We have difficulty finding staff in our remote area, so our only other option is to sack them [which isn't an option]... so we just have to take the risk that they might injure themselves. I don't understand why the employers have to be made responsible for the stupidity of employees such as these."

"WorkCover just seems to support common law claims and do not fight them. No wonder people claim for minor injuries - it is a sure way to get money although not very moral. Employers are just a target and need to be protected more"

"Common law is much too easy to access in this state. With law firms freely advertising that they can obtain a slightly injured worker a lot of money, employers are on the backfoot"

"Common law must be available so workers can be compensated where justified. However on too many occasions, WorkCover will settle out of court where there is clearly no valid claim. More funds must be directed at fighting bogus claims that are ruining the system. WorkCovers' insistence at settling out of court to reduce claim costs in the short term has only encouraged more future claims and therefore is far worse in the longer term. So many claims are settled out of court where there is no medical evidence of injury, only the plaintiff's statement of pain etc to the doctor"

"Our biggest concern is that once the "no fault system" allows a stat claim, a common law claim is then usually possible and our experience is that WC does little to defend the claim and the employer has no real ability to help in the defence of the claim. Also the fact that even where the level of contribution to the injury is very small or even questionable, the fact that the person was on the payroll of a certain company should not make that company liable (through it's premium) for the full recovery and expense of treatment as well as common law litigation. Some kind of reasonable proportionate liability should be considered"

## 10.0 REHABILITATION OF INJURED WORKERS

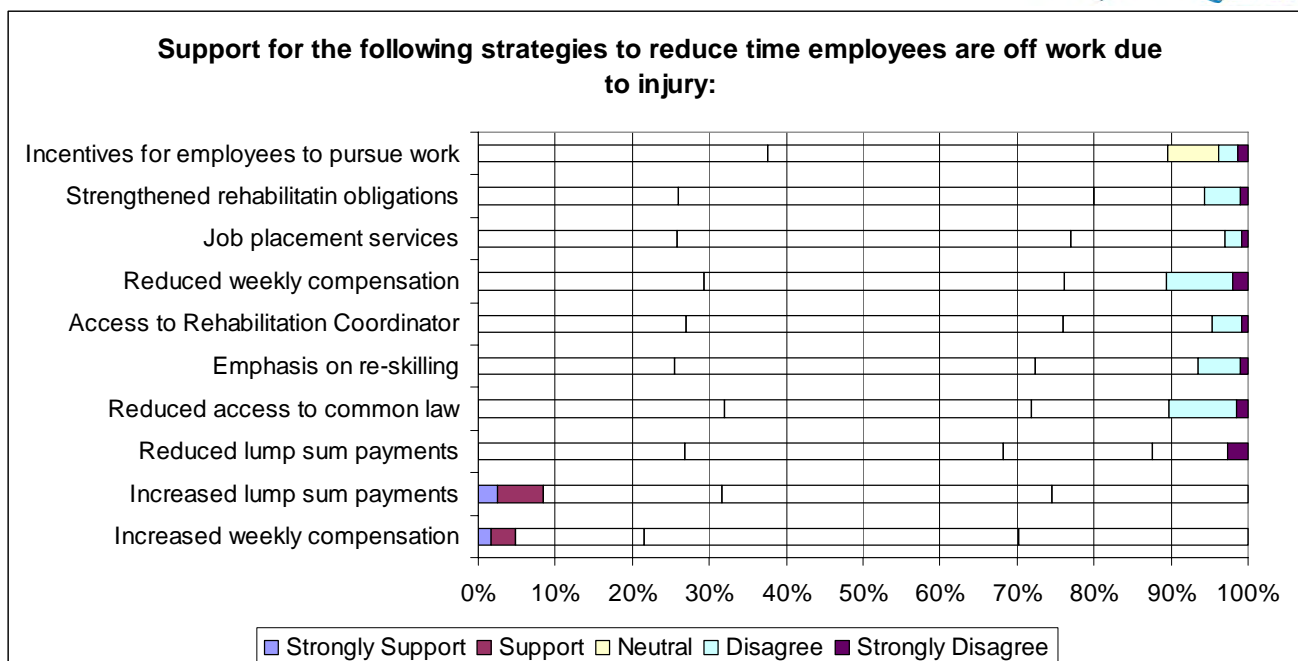
10.1 Queensland employers are strongly supportive of placing increased emphasis on rehabilitation and return to work initiatives as a method of reducing claim duration and encouraging an earlier return to work. The additional funds costed by WorkCover in the discussion paper for increasing the weekly benefits of workers on statutory claims, should be directed instead towards rehabilitation and return to work initiatives.

10.2 Employers are supportive of implementing the following strategies to reduce the time employees are off work due to injury and encourage an early return to work:

- Incentives for employees to pursue work when unable to return to their previous job or employer;
- Strengthening the rehabilitation obligations of both workers and employers;
- Job placement services;
- Reduced weekly compensation rates;
- Access to a Workplace Rehabilitation Coordinator;
- More emphasis on re-skilling / retraining;
- Reduced access to common law;
- Reduced statutory lump sum payments.

10.3 Employers are not supportive of increasing statutory lump sum payments or increasing weekly compensation rates to encourage workers to return to work early following an injury.





Source: CCIQ Workers' Compensation survey, March 2010

#### 10.4 Other suggestions from employers on how to reduce the time employees are off work due to injury include:

- Educating doctors on the WorkCover process including rehabilitation and suitable duties that can be undertaken;
- Enhancing communication with doctors on progress with rehabilitation of worker;
- Ceasing benefits for workers who refuse to participate in rehabilitation or follow the directions of the rehabilitation coordinator;
- Encouraging those who are able to return to work to do so. This could include allowing them to undertake alternative suitable duties and adopting flexible hours and work conditions;
- Having a dedicated WorkCover Rehabilitation Officer with increased involvement in rehabilitation of employees. Access to free rehabilitation would also be extremely beneficial;
- Government funding for specialist job placement services.

#### Recommendation

Increased focus and funds directed towards rehabilitation and return to work initiatives as a method of reducing claim duration and encouraging an earlier return to work.

### 11.0 QUEENSLAND BUSINESSES' PREFERRED OPTION MOVING FORWARD

11.1 CCIQ recommends introducing a 15% WPI threshold while maintaining premiums at current levels. The projected income statement included in the Deloitte report (p.44) relating to the implementation of this option shows WorkCover's bottom line returning to the black by the end of 2010-11. Implementing this recommendation in the short term would have positive benefits on the current situation, and allow WorkCover Queensland and the State Government to focus on the additional recommendations put forward by Queensland businesses to improve the overall operation of the scheme. Further reasons for the adoption of this position by CCIQ are detailed below.

#### 11.2 Opposition to increasing premium rates

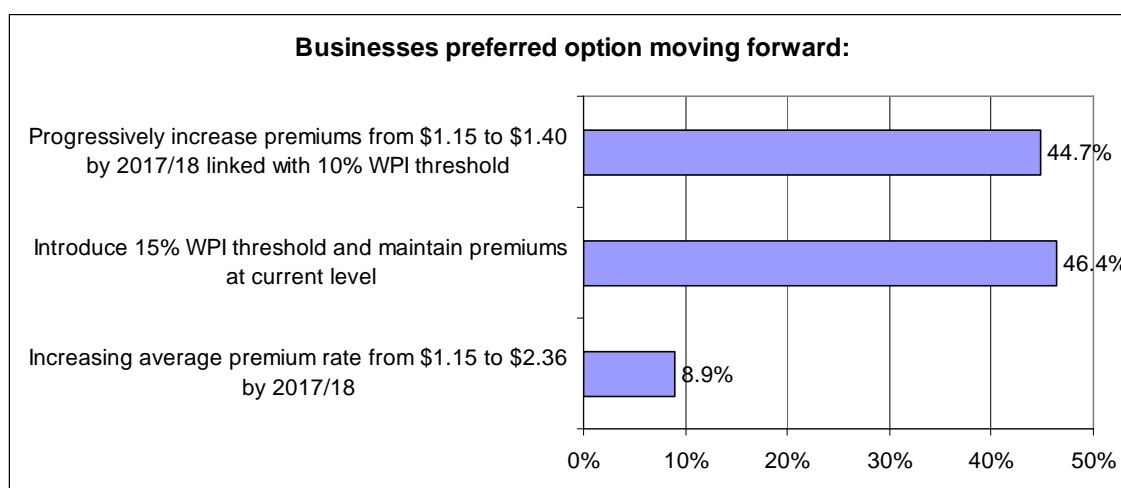
CCIQ opposes the recommendation to progressively over time increase the average premium rate. It would be inequitable and untenable for employers to be asked to assume additional responsibility for funding a turnaround in WorkCover's position. Employers simply cannot afford to, and should not be

asked to, fund any additional benefit. Employers cannot accept an additional responsibility to finance a solution that is overwhelmingly a problem relating to investment performance and common law costs.

- 11.3 CCIQ is concerned at the cost that an increase in premiums would impose on business, particularly small businesses who cannot afford to fund any increases in business costs. This would represent a cost burden that would constitute a significant risk to Queensland businesses.
- 11.4 The majority of Queensland businesses do not operate with margins or reserves which would allow them to pay significant additional premiums. It is not simply profit or margins that would be threatened, but also business viability and the capacity of business to offer employment. The State Government must consider whether substantially increasing premiums to better position WorkCover in the marketplace, would be worth the negative implications for employment and investment by businesses in metropolitan and regional Queensland.
- 11.5 Some Queensland businesses are willing to accept the alternative option of introducing a 10% WPI threshold for accessing common law and progressively increasing the average premium level to \$1.40 by 2017/18. However, as the Queensland workers' compensation premium is one of the few remaining areas where Queensland still has a competitive advantage, the State Government needs to ensure that any increase in premiums is minimal and does not jeopardize Queensland having the lowest levy in Australia. The majority of Queensland businesses are clearly favouring the introduction of a 15% WPI threshold that subsequently enables premiums to be left untouched.

Impact on Premiums									
Options	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18
Progressively increase premiums & introduce 10% WPI threshold	\$1.15	\$1.25	\$1.25	\$1.30	\$1.30	\$1.35	\$1.35	\$1.40	\$1.40
15% WPI threshold and maintain premiums	\$1.15	\$1.15	\$1.15	\$1.15	\$1.15	\$1.15	\$1.15	\$1.15	\$1.15
Increase premiums only	\$1.15	\$1.30	\$1.46	\$1.61	\$1.76	\$1.91	\$2.06	\$2.21	\$2.36

Source: DJAG Discussion Paper The Queensland Workers' Compensation Scheme, February 2010 and Deloitte report 2009



Source: CCIQ Workers' Compensation survey, March 2010

#### 11.6 The need to reduce common law claims and costs

One of the key reasons contributing to the current situation is the increasing number of common law claims and costs. Currently, the common law process represents an expensive means of awarding compensation to employees compared to the statutory process, particularly for minor injuries in the lower levels of WPI.

- 11.7 It is not a case of denying access to compensation for employees who are genuinely injured in the workplace, rather it is about achieving the most efficient means of delivering outcomes for all stakeholders.

11.8 Queensland employers believe that the statutory process is an appropriate method of achieving compensation for genuine work-related injuries within the range of 0 to 15% WPI. As a result, CCIQ supports the introduction of a 15% WPI threshold for accessing common law.

***Recommendation***

Introduce a 15% Whole Person Impairment (WPI) threshold for accessing common law while maintaining premiums at current levels.

# Commonwealth Bank CCIQ Pulse Survey of Business Conditions



December Quarter 2009



CHAMBER OF  
COMMERCE &  
INDUSTRY  
QUEENSLAND



**Determined** to be different



## > Introduction

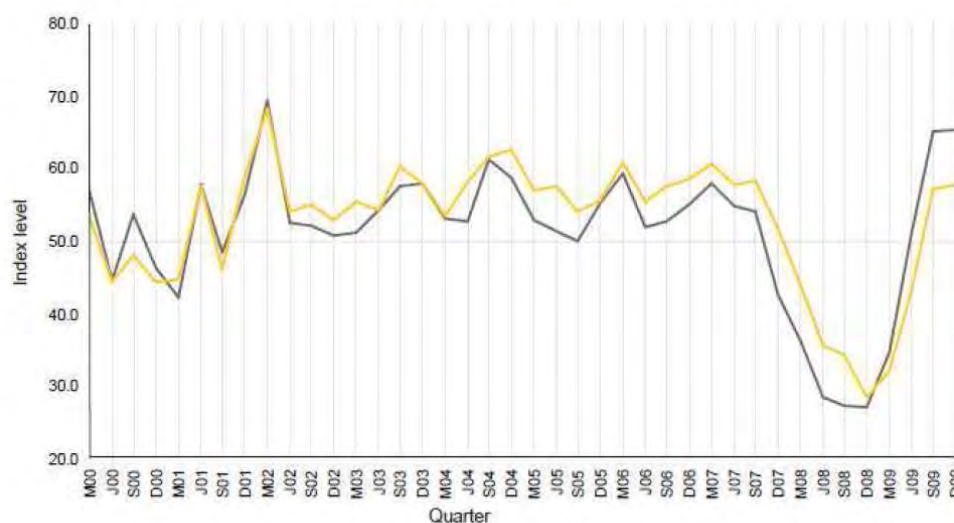
Overall the survey has highlighted that trading conditions and business confidence have further improved over the December quarter, based on a continuing global and domestic economic recovery.

The Queensland economy commences 2010 in much better shape compared to its depressed starting point a year earlier.

Business confidence is on the rise but nevertheless, actual business indicators such as sales and profitability continue to fall short of expectations. Businesses are right to be asking why their expectations are not being met and why their confidence in the Queensland economy is not as high as confidence for the National economy.

It is concerning that the Queensland economy has not shown the same continued improvements occurring nationally, and that there is a disconnection between confidence and actual business performance and a divergence between expectations and actuality.

## > 12 Month Outlook: Australian & Qld Economies



Australian Outlook			
	Dec-08	Sept-09	Dec-09
Weaker	74	11	11
Same	17	32	28
Stronger	9	57	61
Index	27.2	65.2	65.3

Queensland Outlook			
	Dec-08	Sept-09	Dec-09
Weaker	72	21	19
Same	20	37	34
Stronger	8	42	47
Index	28.6	57.2	57.7

*"Increasing debt and industrial unrest due to asset sell-offs will dampen possible economic growth in Queensland."*

– survey respondent

— Australian economy  
— Queensland economy

### Australian Economy

> The rapid resurgence in business confidence for the National economy has stabilised at a very healthy level. No doubt Australia's stellar economic performance compared to the global trend continues to instil business confidence and is further driving Australia's economic recovery. The majority (61 per cent) of survey respondents expect national economic conditions to improve over the next 12 months. This compares to just 9 per cent of respondents in the corresponding quarter last year, a remarkable turn around in just 12 months. The Australian Pulse Index at 65.3 is only 4.2 points off its historic high of 69.5 recorded in the March quarter 2002.

### Queensland Economy

> The picture for Queensland although much improved is not as optimistic. Queensland businesses are taking much longer to restore their confidence in the State economy. Subsequently this continues the unique trend of Queensland businesses feeling less confident about the State economy than the National economy. 47 per cent of survey respondents expect the Queensland economy to strengthen over the next 12 months comparing to 8 per cent this time last year. The Queensland Pulse Index is at a satisfactory 57.7.



## > 12 Month Outlook: Australian & Qld Economies continued...

### Factors Affecting the 12 Month Outlook

According to Queensland businesses our poorer confidence in the State economy can be attributed to a number of factors. Potential risks to the Queensland economy in 2010 include:

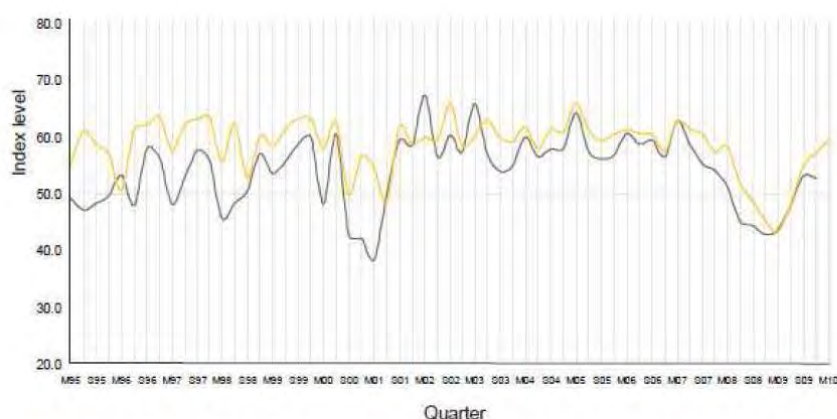
- > Queensland's dependence upon the resources sector and other exports places great importance in the continued global economic recovery. There is little doubt that our State's economic fortunes are intertwined with the global recovery. For this reason we are not completely in control of our immediate future and will be a passenger on a bumpy recovery.
- > The value of the Australian dollar also poses a greater problem for the Queensland economy. Exporters will feel the pinch of our high dollar as will tourism operators. Unfortunately any respite from this trend in the near future will be minimal as the interest rate differential and stronger National economy places further demand on our already attractive dollar.
- > An emerging trend in this survey was confidence in the Queensland Government. This is making consumers and business cautious and creating some uncertainty regarding the extent of the recovery in Queensland. Increased government debt, asset sales, loss of the State's AAA credit rating, compromised liveability in SEQ, Australia's highest unemployment rate, rising utility costs and generally a poorer economic performance have undermined both consumer and business confidence.

For these reasons Queensland businesses enter 2010 behind the eight ball compared to businesses located elsewhere in Australia.

Factors affecting Australian businesses more broadly in 2010 will include:

- > Following three successive official interest rate hikes coupled with some major lenders increasing their lending rates by more than the official rate rise, RBA's monetary policy settings is a paramount issue for 2010. A full one per cent rise in official interest rates is anticipated across the year.
- > A federal election is due this year and will be mildly disruptive to the State economy adding to investment and employment uncertainty. Businesses have also cited concern over what will unfold following the withdrawal of the Federal Government's stimulus packages.
- > Queensland businesses have conveyed difficulties in the Fair Work laws and an associated erosion in incentive for employing.
- > Capacity constraints are also re-emerging. After disappearing off the radar in recent quarters, labour recruitment and retention issues have returned as a key influence on the 12 month outlook. As the past skills shortages demonstrated, this issue is a particular concern as the availability of skilled labour has the potential to seriously undermine the growth potential of Queensland businesses and may place increased wage pressures on employers.

## > Sales & Revenue



Sales & Revenue				
	Dec-08	Sep-09	Dec-09	Mar-10
Weaker	44	28	25	20
Same	27	31	33	35
Stronger	30	41	43	44
Index	42.8	53	52.8	59.4

"Consumers seem to be a little concerned with which way the economy in 2010 will go now that the free money has stopped flowing from the current federal government and hence they seem to be holding onto their money until they are sure that our economy is back on the move."

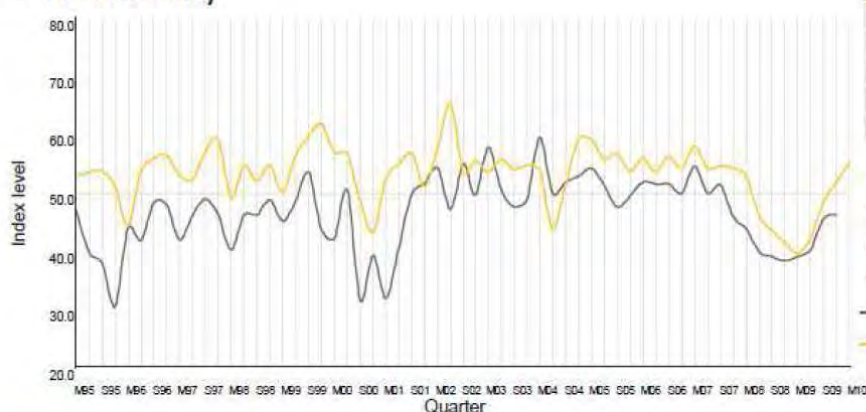
– survey respondent

— Current  
— Expected

- > Queensland businesses had great expectations for their sales revenue in the December quarter. However these expectations have not been fully realised with the general view that economic conditions as reflected by sales and revenue have begun to improve but only incrementally so. 43 per cent of survey respondents reported stronger sales and revenue over the three months to December. This was a good result but could and was expected to be better.
- > While the Pulse Sales & Revenue Index, in seasonally adjusted terms, remained steady in the December quarter, it is encouragingly forecast to increase (up to 59.4) in the March quarter 2010.



## > Profitability



Profitability				
	Dec-08	Sep-09	Dec-09	Mar-10
Weaker	47	37	33	23
Same	37	37	37	42
Stronger	16	27	30	36
Index	38.5	45.8	46.4	55.5

"Power bills and state government fees and charges are going up much faster than can be absorbed."

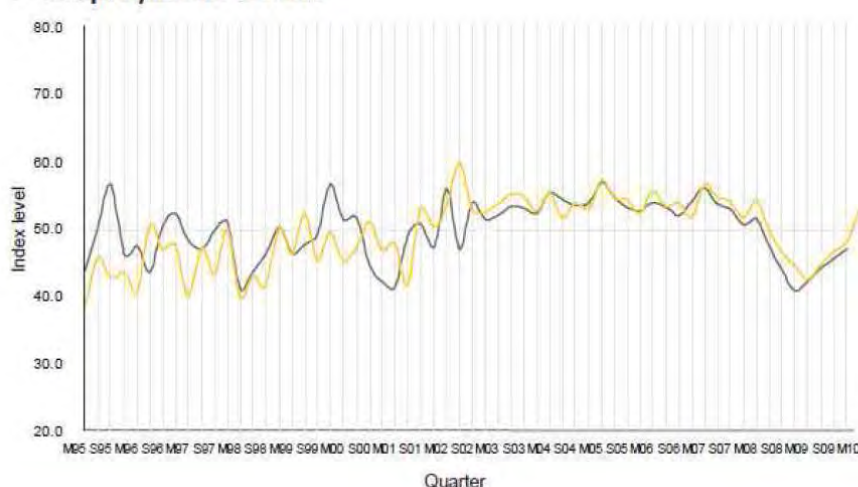
– survey respondent

— Current

— Expected

- > In the aftermath of the global economic downturn, the slog of restoring business profitability has commenced. However this indicator is recovering very slowly. Strengthening sales has not yet translated into improved profitability with over 60 per cent of businesses reporting either weaker (33 per cent) or equal profits (37 per cent) in the December quarter 2009. Analysis of average selling prices confirms that many businesses have cut margins in order to maintain or grow market share amid fierce competition.
- > The slow recovery in profitability is reflected in the Pulse Profitability Index which is up only marginally to 46.4 and falls well short of expectations from the previous September quarter.
- > Increasing business costs as a result of labour costs, raised bank lending rates, higher taxes and utility costs have also compounded the impact on businesses' bottom line.
- > Enhanced productivity growth is the key to lifting business performance and ensuring business profitability is back in the black. Expectations for profitability remain positive for the coming 3 months with the Index forecast to move into positive territory in the March quarter 2010.

## > Employment Levels



Employment Levels				
	Dec-08	Sep-09	Dec-09	Mar-10
Weaker	34	26	20	14
Same	55	58	64	64
Stronger	11	16	16	22
Index	41.1	45.9	47.2	48.3

"It appears the new award legislation will turn back the clock on labour reform in this country and hence provide upward pressure on unemployment which is not what the economy needs right now"

– survey respondent

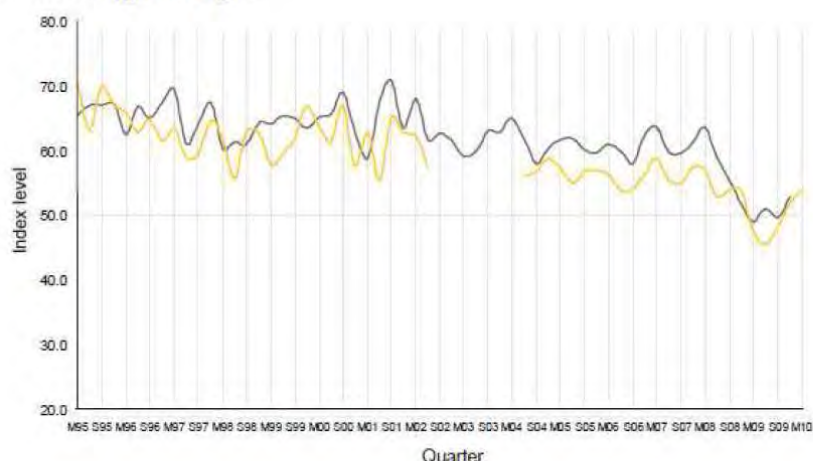
— Current

— Expected

- > As with profitability, employment levels are lagging the general recovery in confidence. Queensland businesses are to be commended for cutting working hours instead of implementing job cuts however they are currently reticent to hire new staff until it is clear that conditions are improving across the board. The majority of Queensland businesses are electing to maintain stable employment levels after reductions in the first half of 2009.
- > This trend is expected to continue over the next three months of 2010 with the Pulse Employment Index forecast to stabilise but at a less than satisfactory level of 48.3 in the short term.
- > Feedback from businesses certainly indicates that the impact of Fair Work Act and new modern awards on business and employment are at present undermining a recovery in the State's labour market.



## > Average Wages



Average Wages				
	Dec-08	Sep-09	Dec-09	Mar-10
Weaker	9	9	7	7
Same	76	73	77	70
Stronger	15	17	16	23
Index	51.7	49.6	52.8	53.8

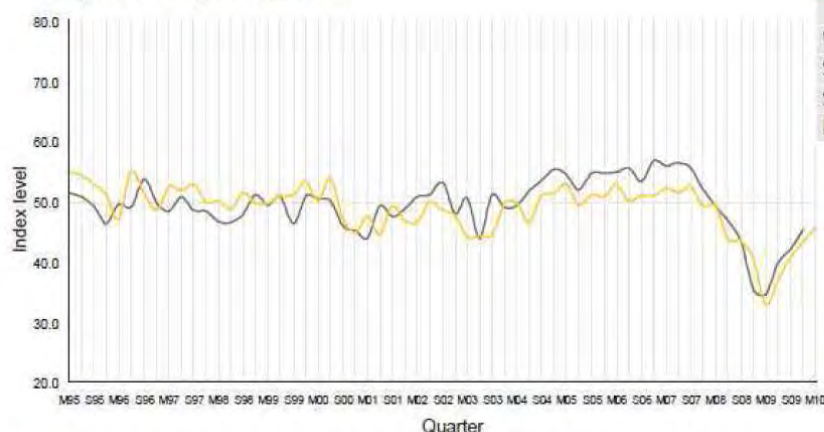
*"Our business is facing a significant increase in its wages bill as a result of the IR changes."*

- survey respondents

— Current  
— Expected

- > The jump in Queensland's unemployment rate and easing of skills shortages during 2009 has undisputedly taken pressure off wages growth, with only 16 per cent of businesses reporting an increase in average wages during the current quarter.
- > However the Pulse Average Wages Index has nevertheless increased from 49.6 to 52.8 over the three months to December 2009 and this upward trend is expected to continue for the March quarter 2010. This reflects increasing award wage rates associated with the new modern awards and the re-emergence of labour recruitment and retention as a major constraint on business growth.

## > Capital Expenditure



Capital Expenditure				
	Dec-08	Sep-09	Dec-09	Mar-10
Weaker	44	36	27	28
Same	42	44	52	54
Stronger	14	20	21	18
Index	35.4	42.2	45.5	45.8

*"Time will tell if the false economy created by the current Federal Governments spending spree over the last two years will hurt the economy over the next twelve months."*

- survey respondents

— Current  
— Expected

- > Capital expenditure also fell short of needed levels for the December quarter 2009, with most businesses reporting stable or reduced capital expenditure over the past three months.
- > While up slightly from 42.2 to 45.5 in the December quarter, the Pulse Capital Expenditure Index remains at less than satisfactory levels and this trend is expected to continue over the next three months.
- > Whilst businesses have responded strongly to the Federal Government's temporary investment allowance helping keep business investment ticking over, there will have been a degree of pulling forward of demand for investment with an associated downturn to follow. It would appear that the winding back of Federal Government stimulus spending coupled with increasing interest rates is causing business to remain cautious and delay any expenditure until there are clear signs of a sustained economic recovery in Queensland.



## > Regional Analysis

Current	Brisbane	Sunshine Coast	Gold Coast	South West Qld	Central Qld	Central Coast	North Qld	Far North Qld	Average
12 month outlook - Queensland	59.4	57.2	55.2	53.2	54.3	63.1	58.3	51.6	57.7
Total sales/revenue	59.6	57.3	54.9	54.2	46.4	61.0	48.0	47.2	52.8
Profitability	51.3	49.7	47.8	50.0	46.6	52.2	38.3	39.3	46.4
Average wages	52.9	52.3	52.5	54.1	52.1	51.4	50.0	50.4	52.8
Employment levels	49.4	47.9	50.3	48.2	50.0	50.0	45.5	42.9	47.2
Capital expenditure	48.5	47.5	46.0	49.6	47.3	49.4	39.0	37.5	45.5

- > Businesses in all regions of Queensland are increasingly optimistic about the performance of the Queensland economy, however there remains considerable room for improvement in all regions but in particular Far North Queensland, South West Queensland and Central Queensland.
- > Profitability and employment levels in North and Far North Queensland lag considerably behind that of the other regions which have all experienced significant improvements in the December quarter.
- > Significantly, the Central Coast region has shown the strongest signs of recovery outperforming all other regions across all indices, possibly reflecting the recovery in the resources sector in the region.

## > Major Constraints on Business Growth



- > Unsurprisingly, the level of demand and economic activity remains the number one constraint on business growth in Queensland. Demand and higher levels of economic activity have increased but so to has competition. Accordingly as a constraint it remains number one.
- > The most noticeable change is the re-emergence of labour recruitment and retention as a major constraint on growth in Queensland. Despite the slow recovery in business confidence and enduring high unemployment rate, Queensland employers are thinking ahead to the long-term impacts that shortages in skilled labour will have on productivity and opportunities for economic growth.
- > Direct wage costs continue to be a critical constraint on business growth, with many businesses struggling to retain staff at current wage levels, let alone at higher rates. The ongoing importance of this factor reflects the uncertainty across the Queensland business community flowing from the introduction of the Fair Work Act. Compliance with IR Laws has now entered the top five hot spot constraints.
- > Aside from the understandable concern at rising interest rates businesses also continue to express concern at the level of state and local business taxes. The removal of the state fuel subsidy, increases in motor vehicle registration charges, higher land taxes and other State Government fees and charges all confirm why this constraint features so prominently.



### > Chamber of Commerce & Industry Queensland Profile



CHAMBER OF  
COMMERCE &  
INDUSTRY  
QUEENSLAND

Chamber of Commerce & Industry Queensland is the state's peak industry body, representing the interests of 25,000 businesses, across all industry sectors and in all regions. We champion business to gear up for the future today with the right set of solutions for success in tomorrow's world.

Chamber of Commerce & Industry Queensland is a non-government organisation that seeks to work with Government and other groups to shape Queensland's economic and social environments in a way that promotes business growth and community prosperity.

Chamber of Commerce & Industry Queensland is called upon by thousands of enterprises to deliver a broad range of business services including business representation, business compliance, business skills, business safety, business sustainability, business connections and business globally. We are commercially-minded and expertly-qualified.

Chamber of Commerce & Industry Queensland is a founding member and influential partner of the Australian Chamber of Commerce and Industry (ACCI) and part of the worldwide network of Chambers of Commerce and affiliated business service organisations.

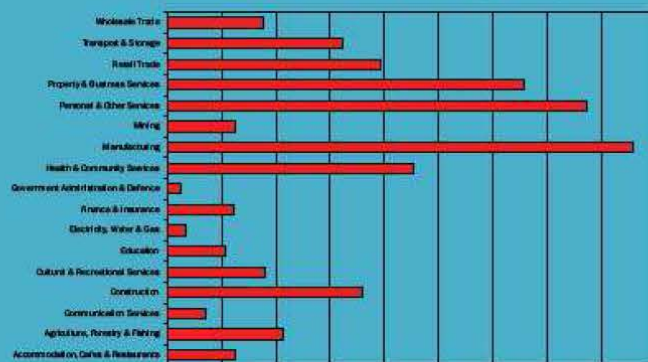
Chamber of Commerce & Industry Queensland has in excess of 3,700 members across 8 regional offices and represents over 135 local chambers of commerce and 60 trade and professional associations.

Our vision is to invigorate business success in Queensland.

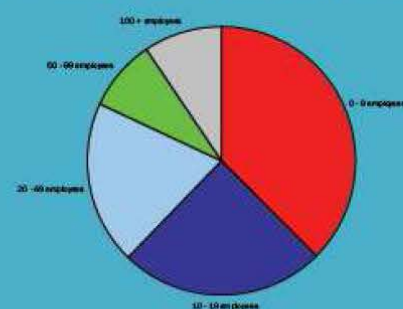


The diversification of Chamber of Commerce & Industry Queensland's membership is illustrated in the following charts:

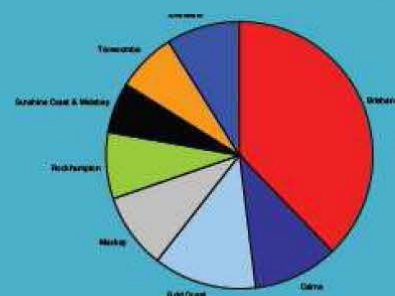
Commerce Queensland members by Industry



Commerce Queensland members by Employment Size



Commerce Queensland members by Region



# CCIQ – Solutions for Business Success

Chamber of Commerce & Industry Queensland (CCIQ) represents over 25,000 businesses in Queensland. We are committed to ensuring our customers have the right tools to achieve real results in their business.

At CCIQ we harness the results of our research, lobbying and policy achievements to offer the best possible business support solutions to invigorate growth statewide, nationally and globally. By joining CCIQ you support the organisation that supports the Queensland business community.

Membership also ensures you are an integral part of an organisation dedicated to providing first class services to assist Queensland industry with relevant and practical business solutions. Not only is membership your connection to information, industry best practice, training and consultancy services, it also allows you to take advantage of the many benefits CCIQ offers.



Our success is success for all Queensland businesses.

Chamber of Commerce & Industry Queensland members are informed and connected business people. Whether you run a small business or form part of a large industry sector, call us today to take advantage of the opportunity to associate yourself with the CCIQ brand.

Visit [www.cciq.com.au](http://www.cciq.com.au) or phone 07 3842 2244 for more information.

## Invigorating Business



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