



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

CHAMBER OF COMMERCE AND INDUSTRY QUEENSLAND

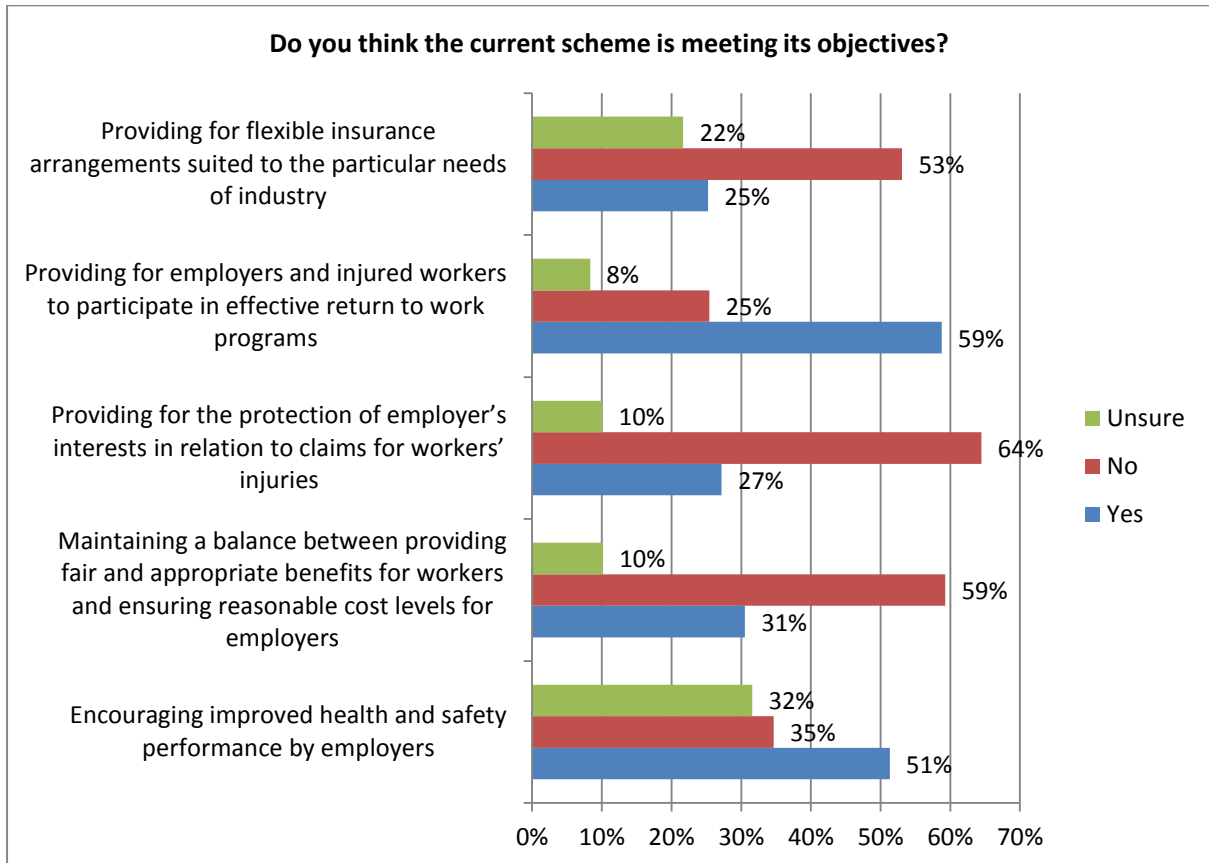
3 SEPTEMBER 2012

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## 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.”*

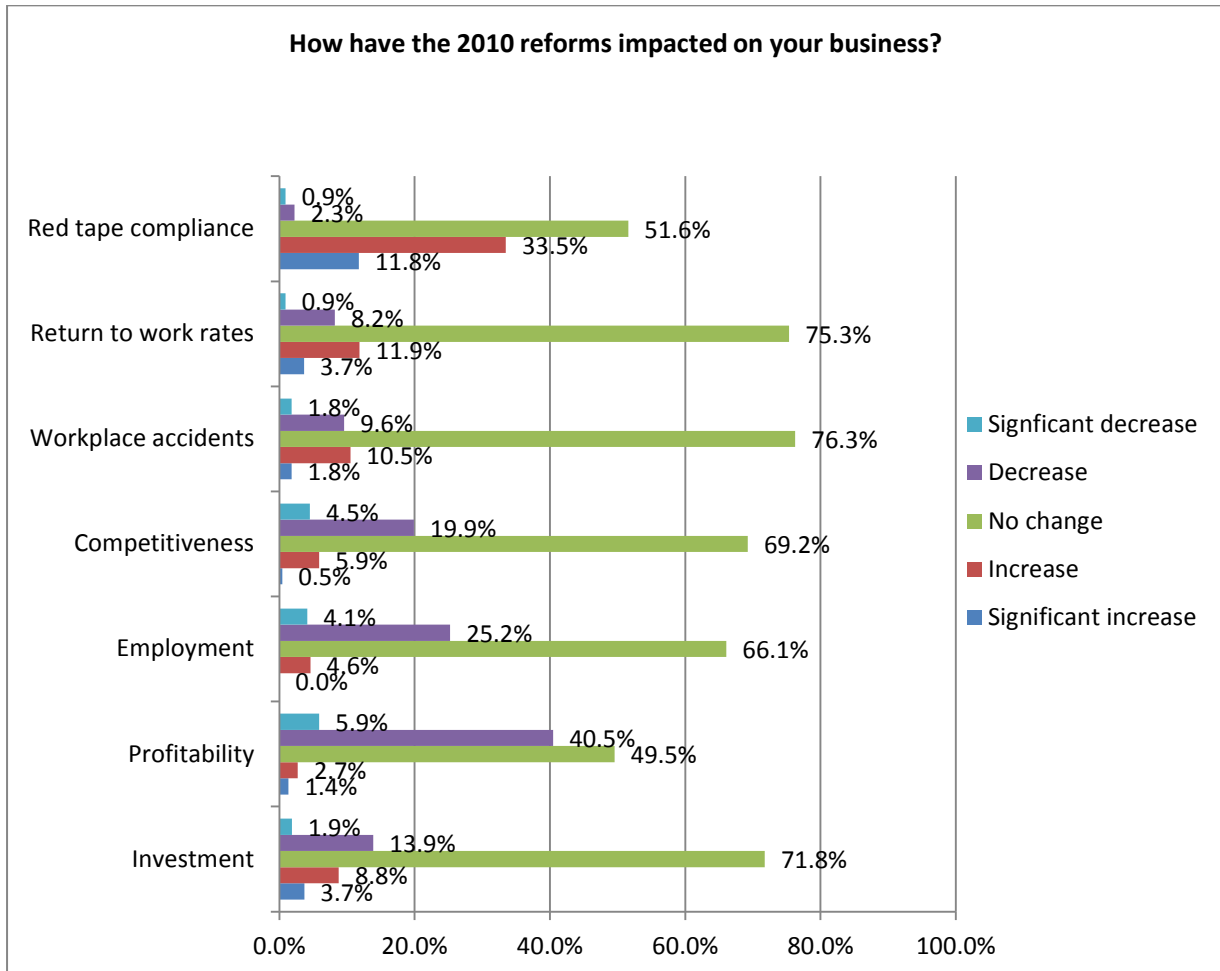
**- Queensland Business**

- 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>

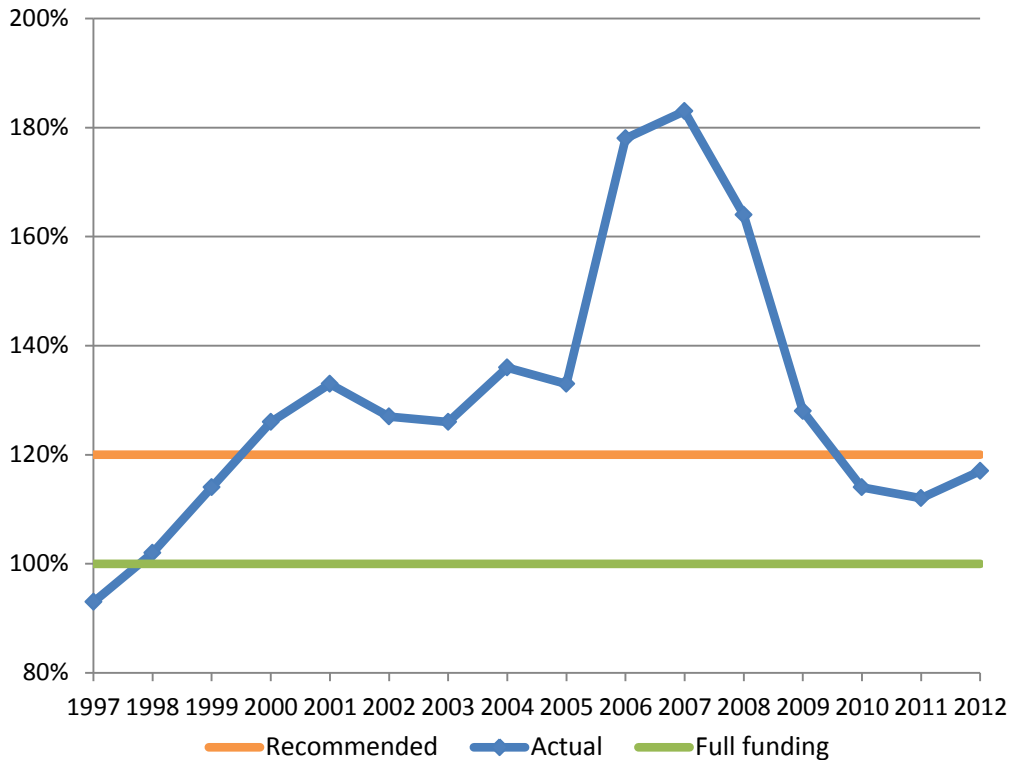
- 4.2 In Queensland, workers' compensation insurance is only available through WorkCover Queensland as a policy provider, unless a licence is granted to self-insure (there are currently only 25 self-insurance licences in Queensland). This is also unique to Queensland, as all other states and territories 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."*

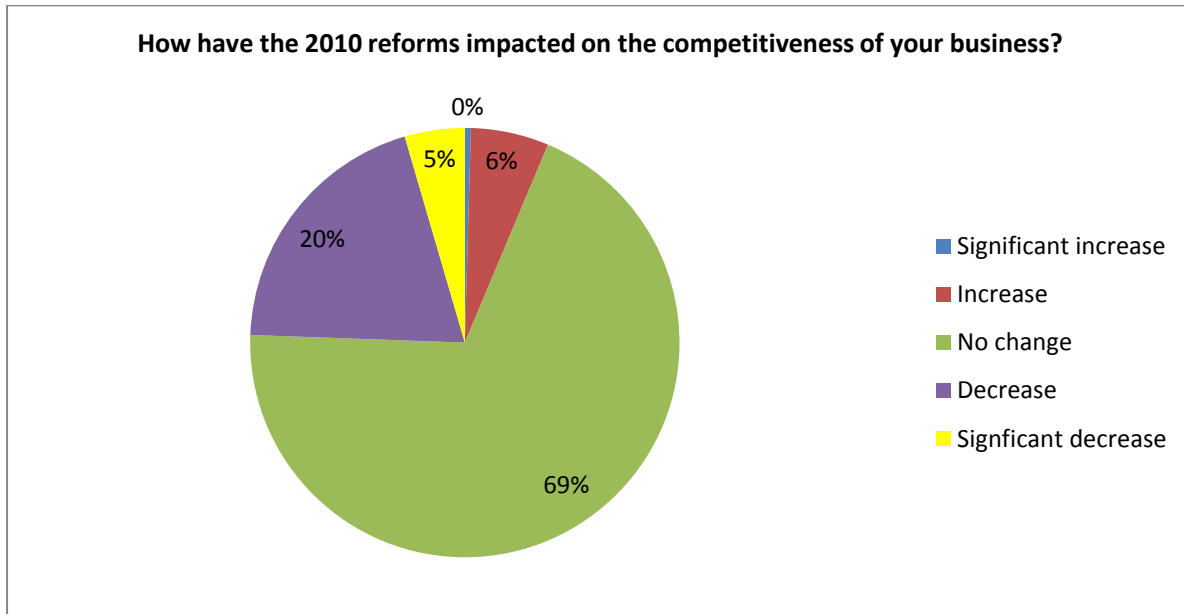
**- Queensland Business**

*"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

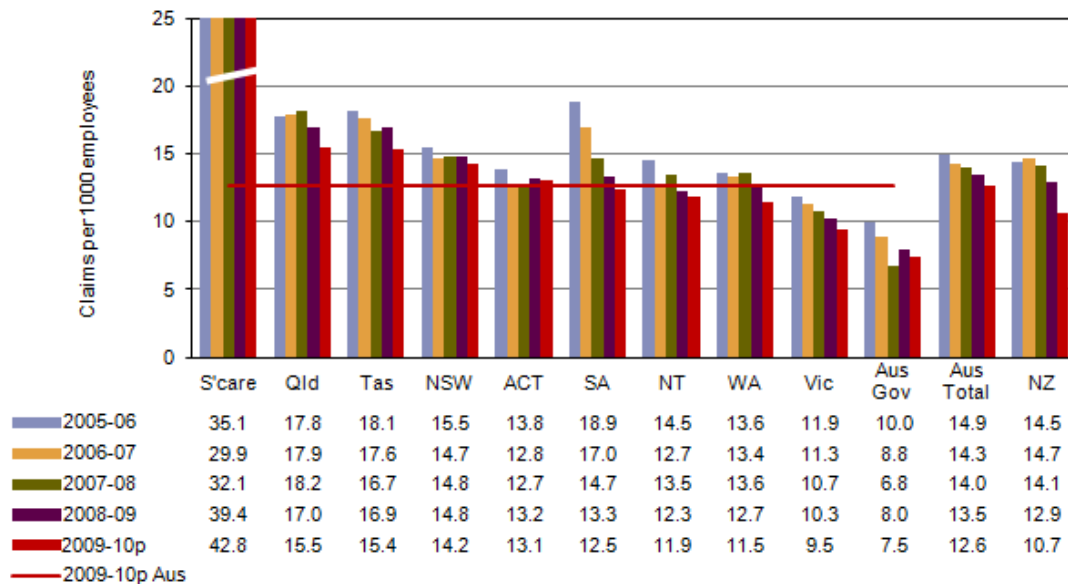
5.3 In CCIQ's 2010 submission we recommended against any increase in premiums to supplement WorkCover's fiscal imbalance. Increasing premiums harms Queensland's competitive advantage. Low premiums promote employment, investment and an overall level of economic activity commensurate with the State's "low 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.

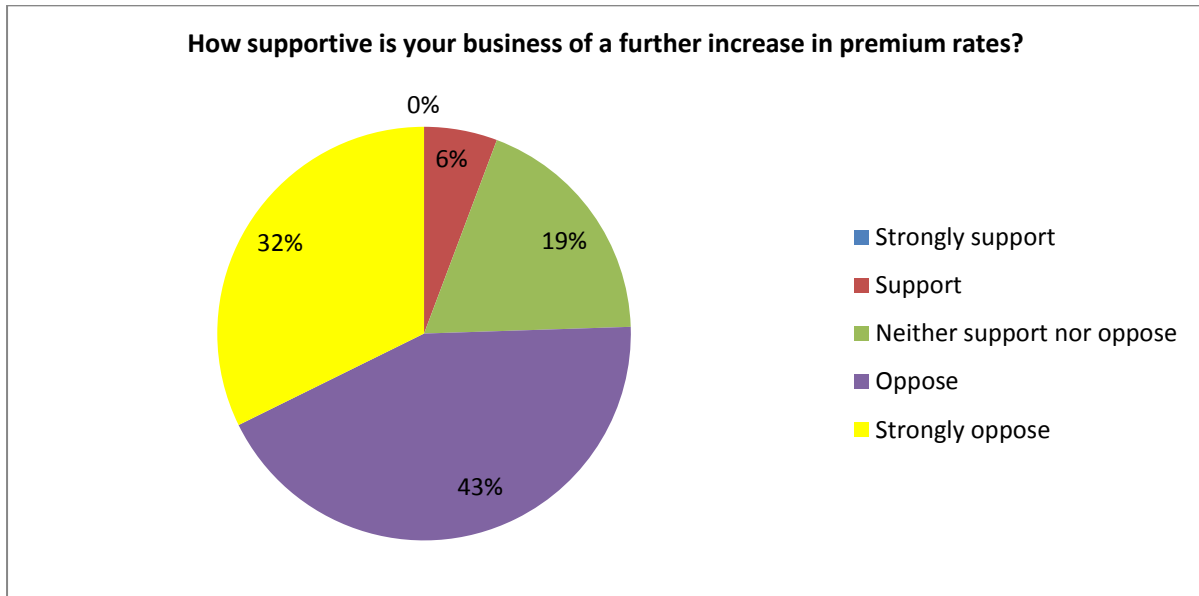
## 6.0 PREMIUMS AND RETURN ON INVESTMENT

- 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

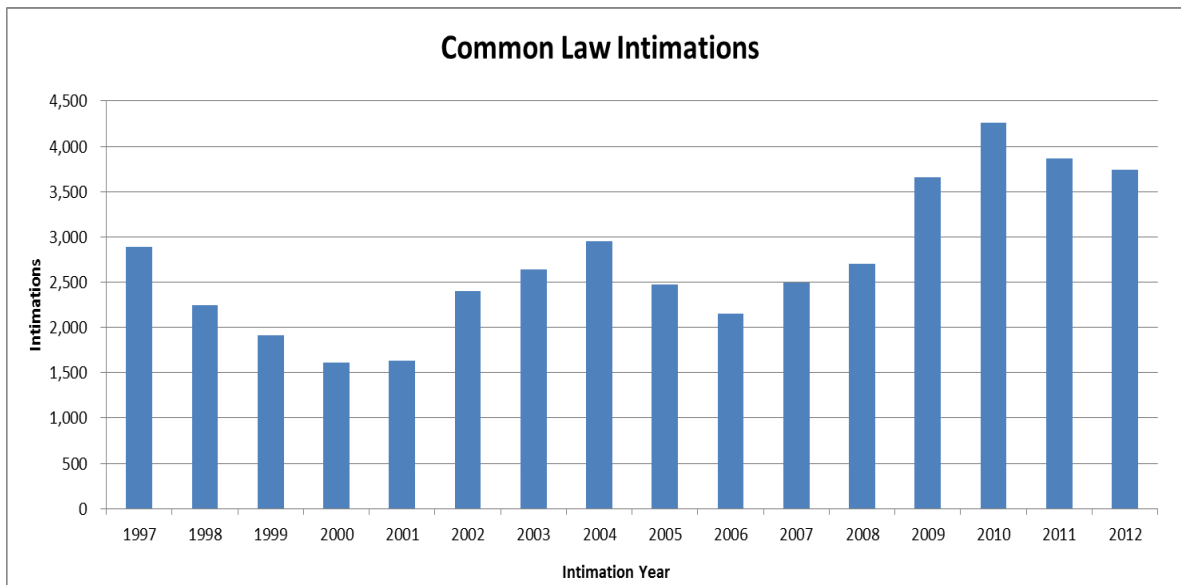
6.3 Members continue to express dissatisfaction with the experienced based rating (EBR) on which Queensland premiums are calculated. This system is not yet adequately representing the investments employers are making in workplace health and safety training and infrastructure. This results in proactive 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.

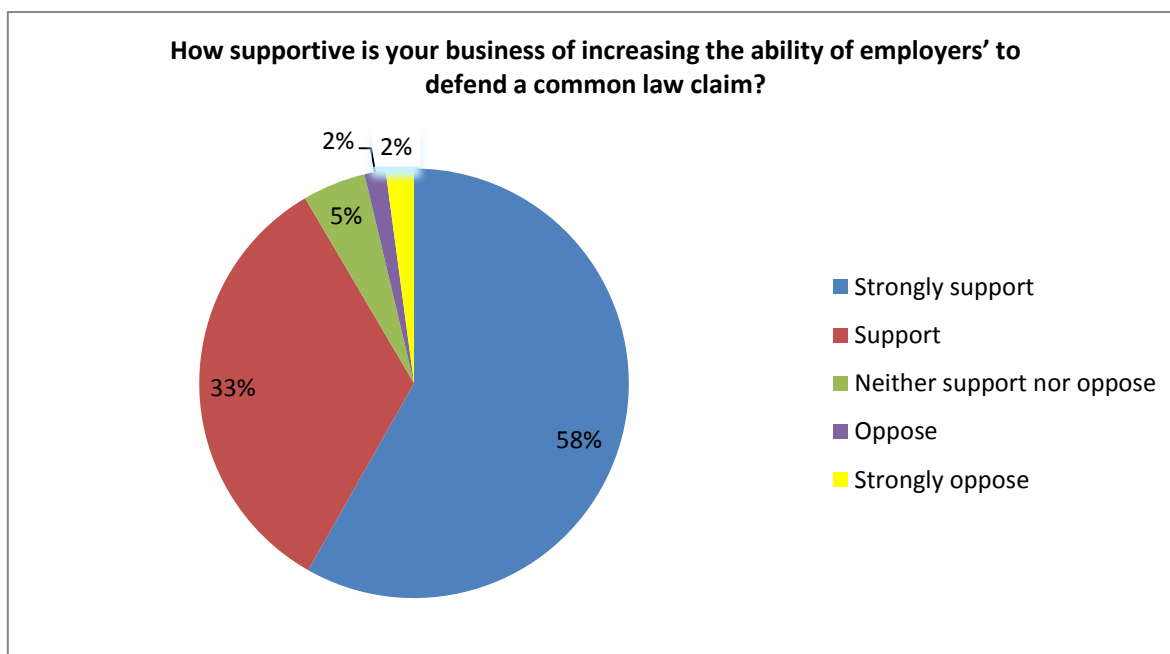
**7.0 COMMON LAW CLAIMS**

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.



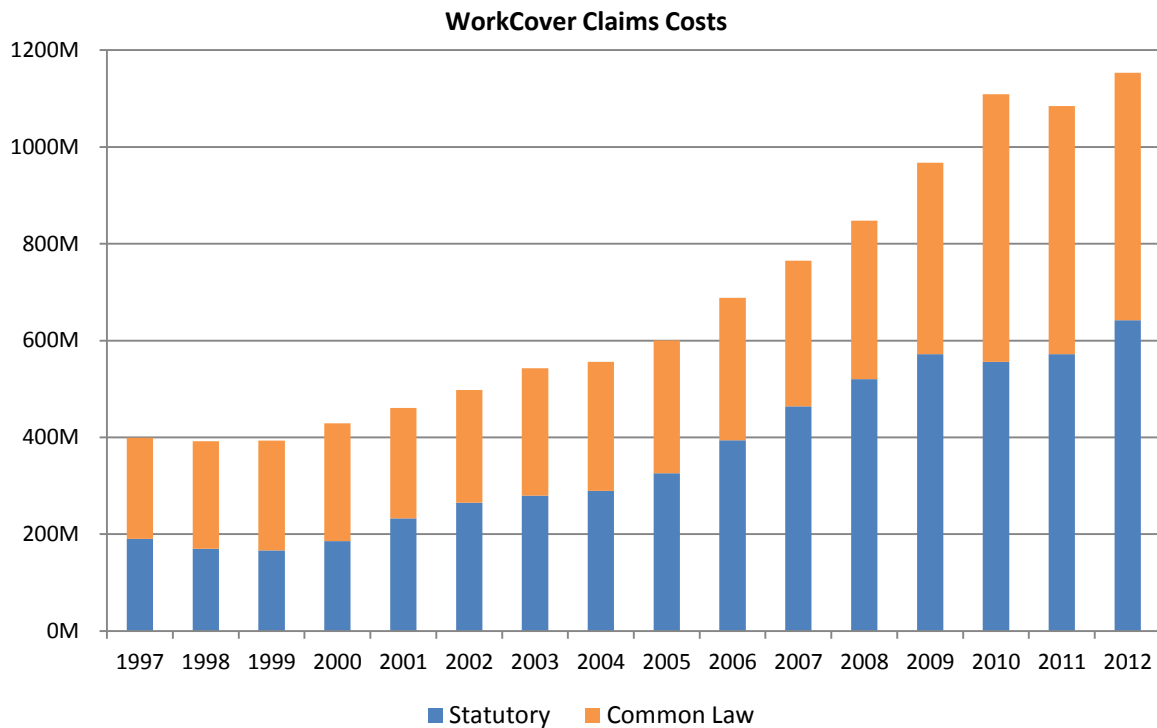
Source: WorkCover 2012

- 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

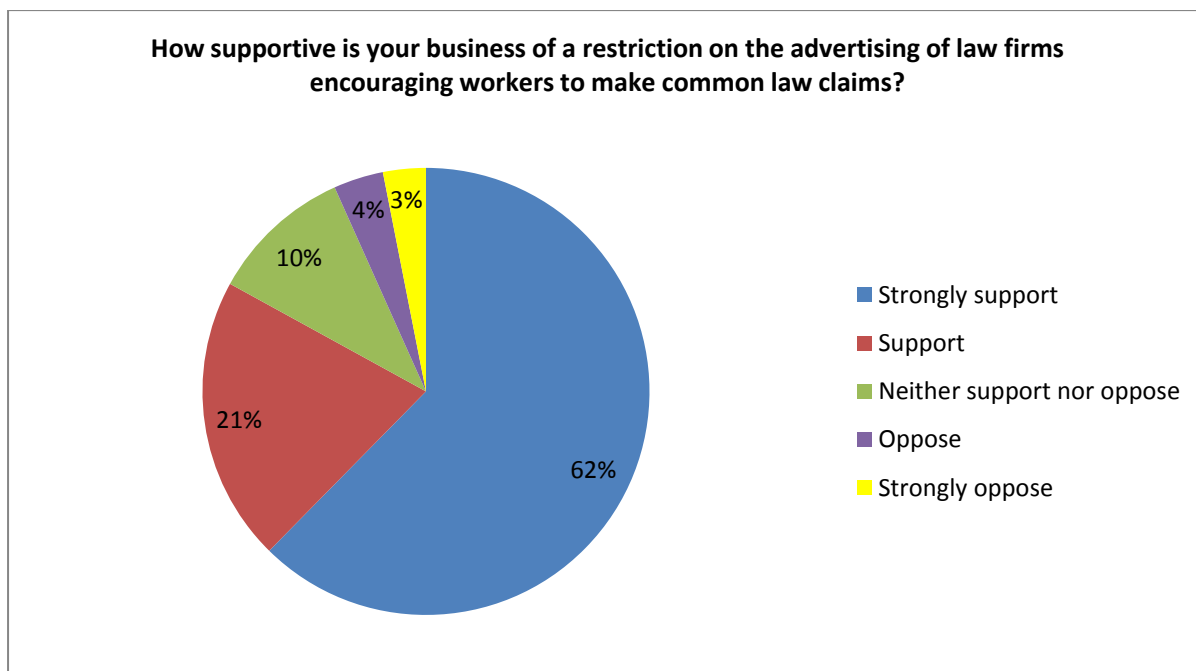
7.5 Given only 4.5 per cent of statutory claims progress to common law, common law claims account for a disproportionate overall cost of the scheme. In 2010-11, common law claims made up 46.0 per cent of claim costs, with the average common law claim settlement (\$120,150) costing approximately 17 times 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.

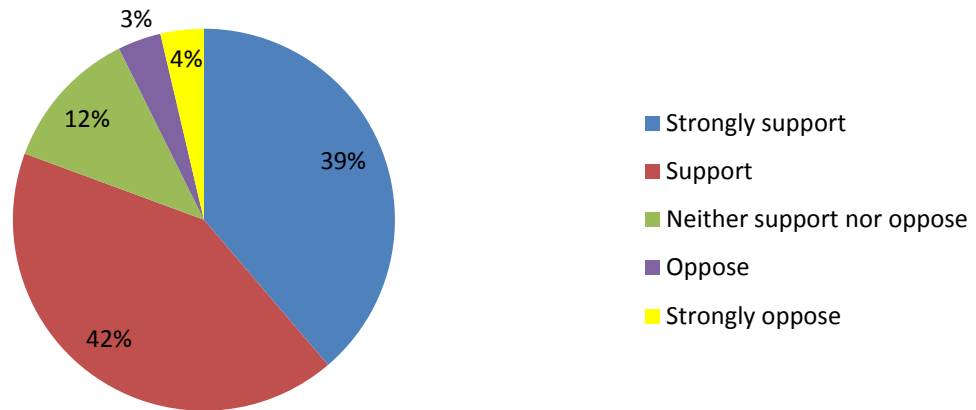


Source: CCIQ Workers Compensation Survey, July 2012

- 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.



**How supportive is your business of the introduction of a threshold to reduce access to common law actions (0-15%)?**



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.”*

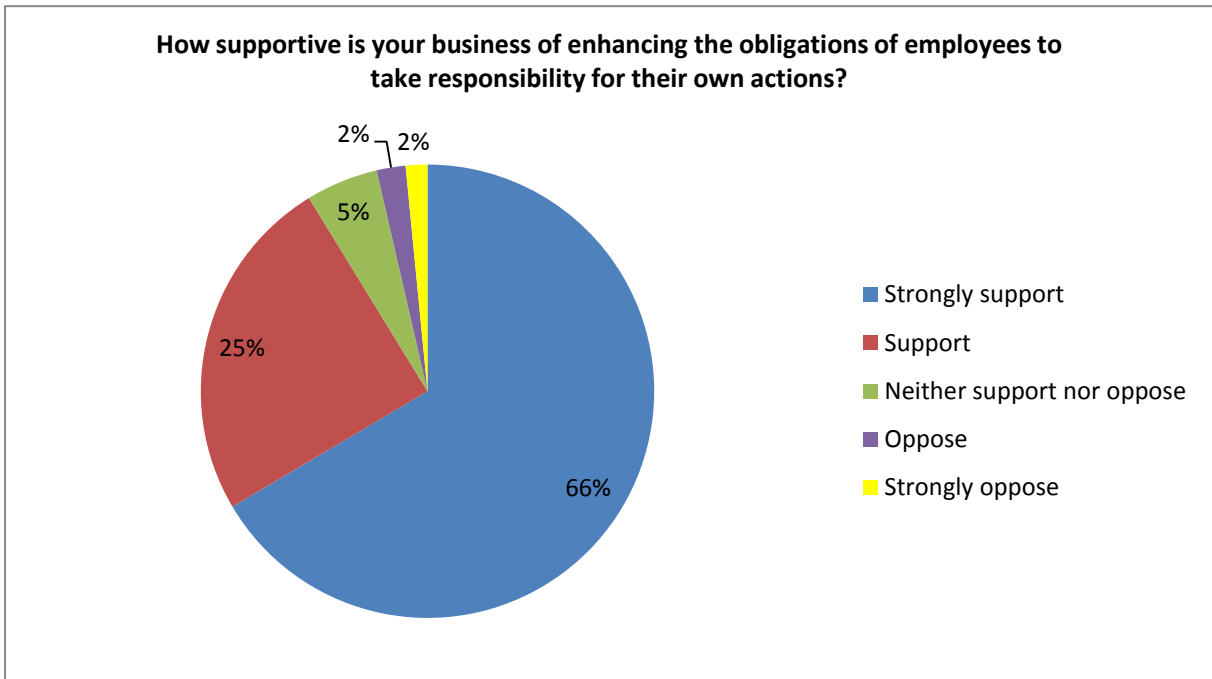
**- Queensland Business**

*“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 2007-08.5 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**

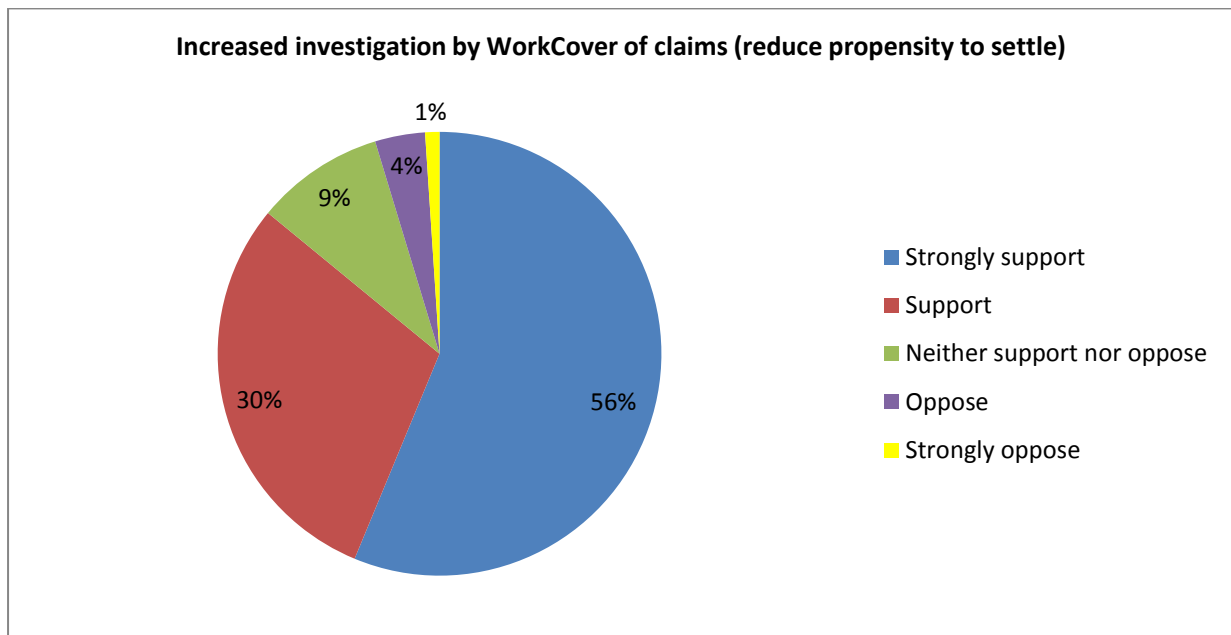
*"Remove liability to employers of journeys to/from work, these can/may be covered by person's own vehicle insurance or public transport general cover if that's the case."*

**- 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.

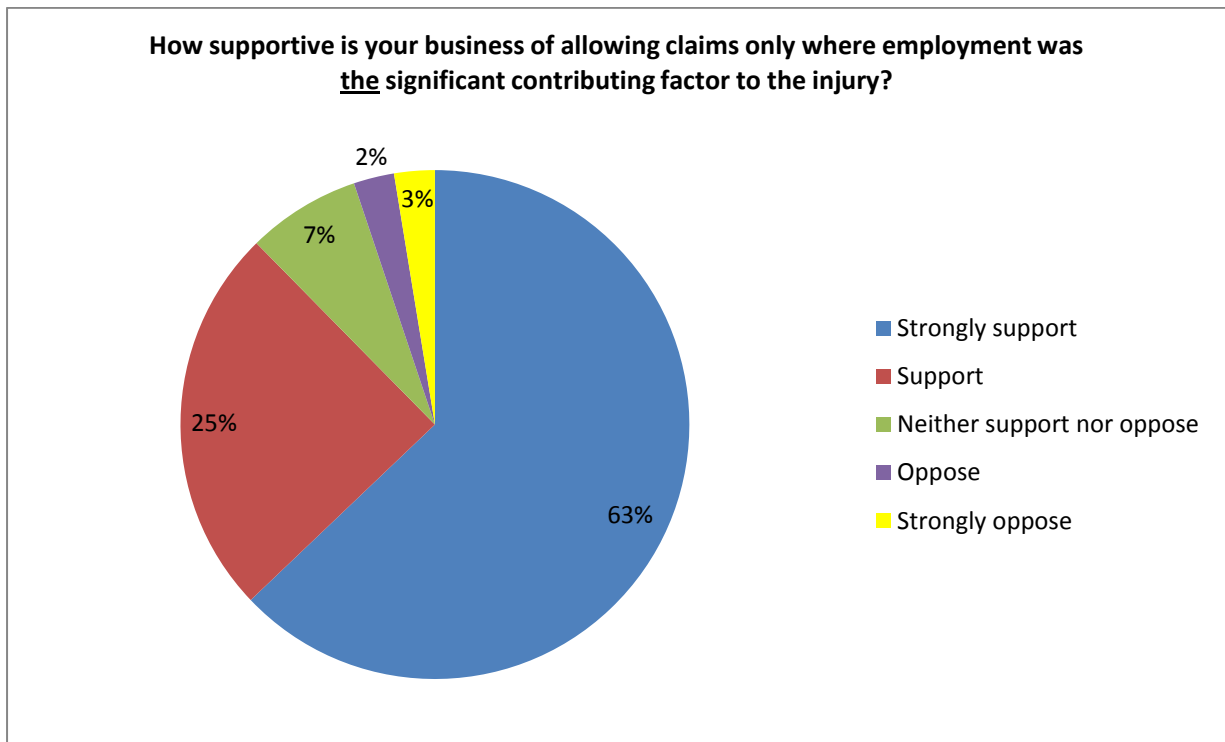


Source: CCIQ Workers Compensation Survey, July 2012

- 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'**

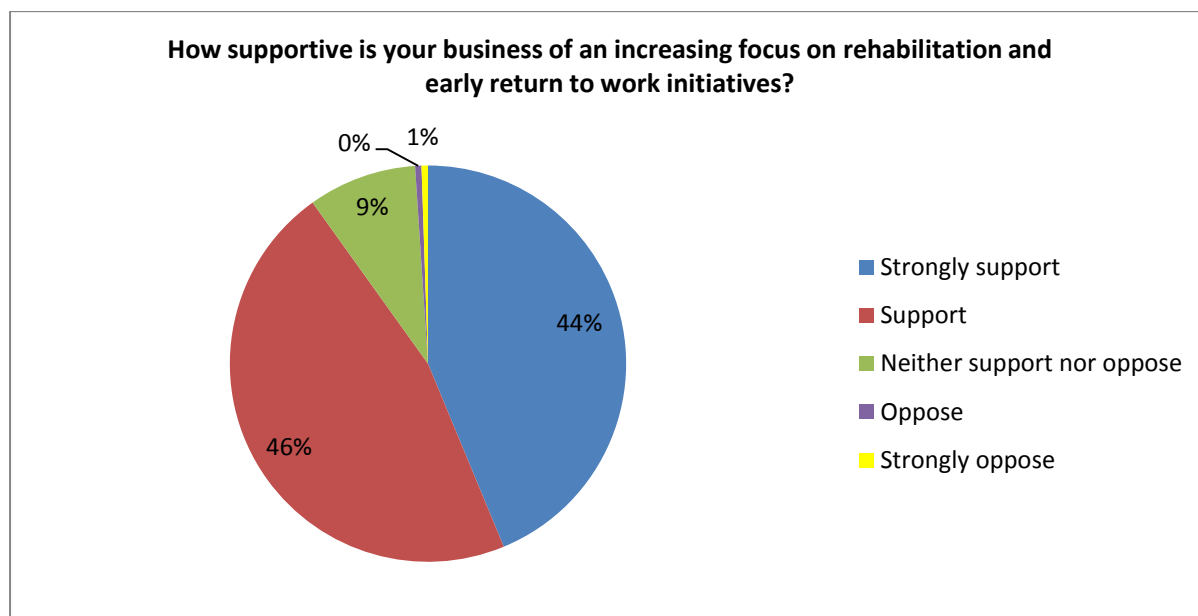
*"There is a need to educate the doctors. We all want the best outcome for the employee. It just makes good business sense."*  
- Queensland Business

*"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

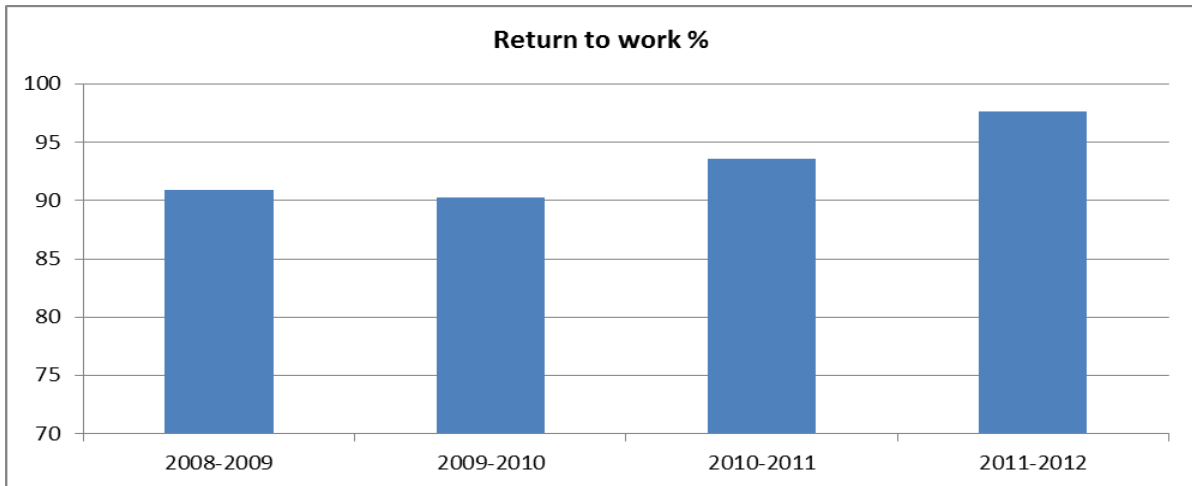
11.1 The introduction of Q-COMP's Return to Work Assist program coincides with a gradual increase in return to work numbers since its inception in 2008. The program assists injured workers who no longer have a job at the end of their compensation claim. The 2010 reforms made it mandatory for insurers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



Source: CCIQ Workers Compensation Survey, July 2012

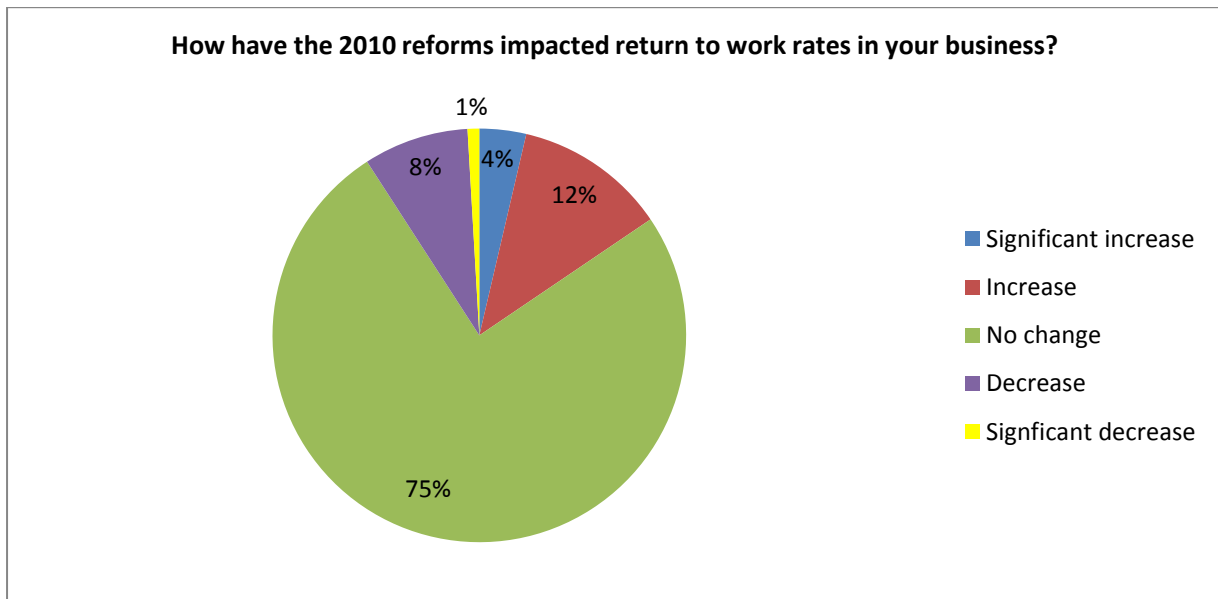
11.2 Accordingly, Q-COMP statistics indicate the return to work rate has increased from 93.7 per cent in 2010-11 to 97.1 per cent in 2011-2012 YTD, with the Q-COMP Return to

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.

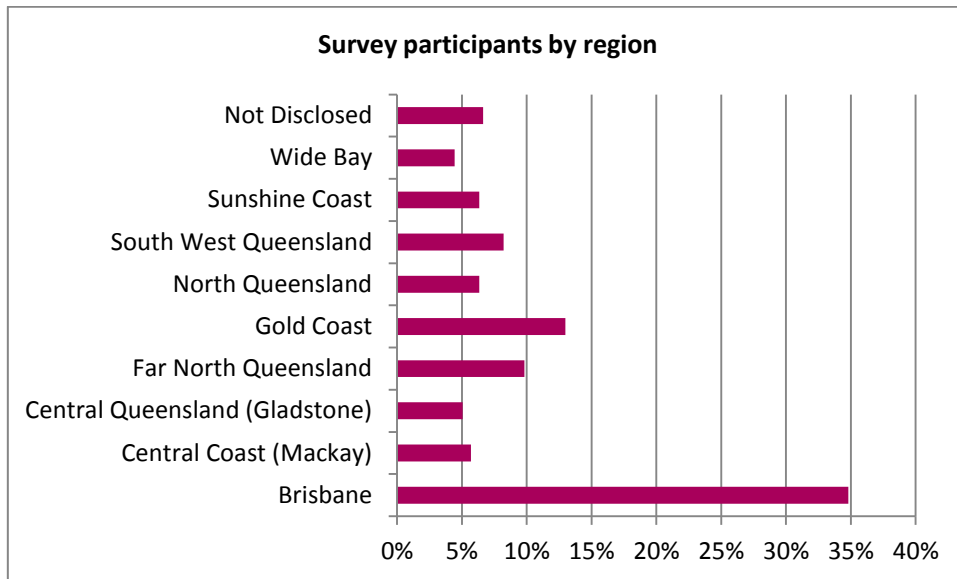
## REFERENCE LIST

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.

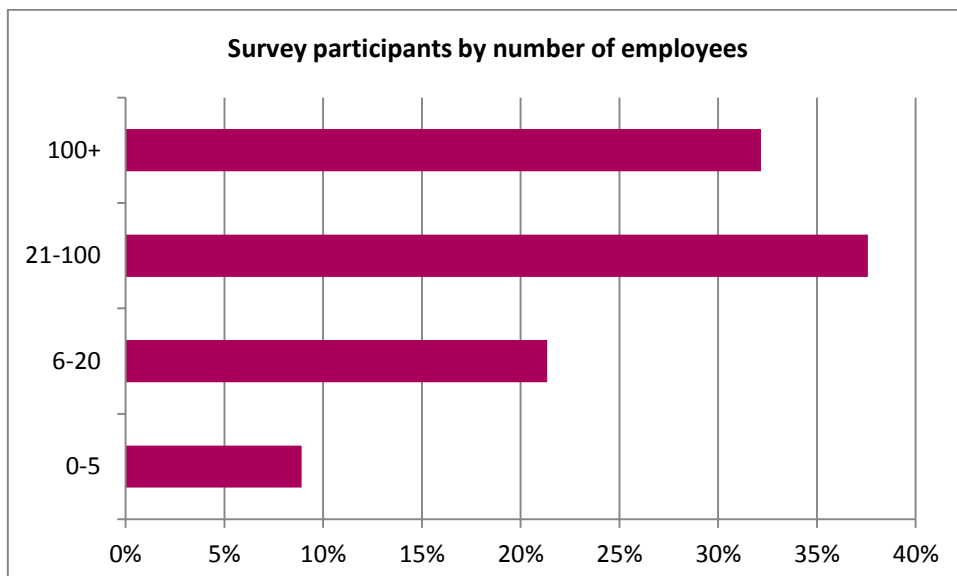
## APPENDIX 1

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.

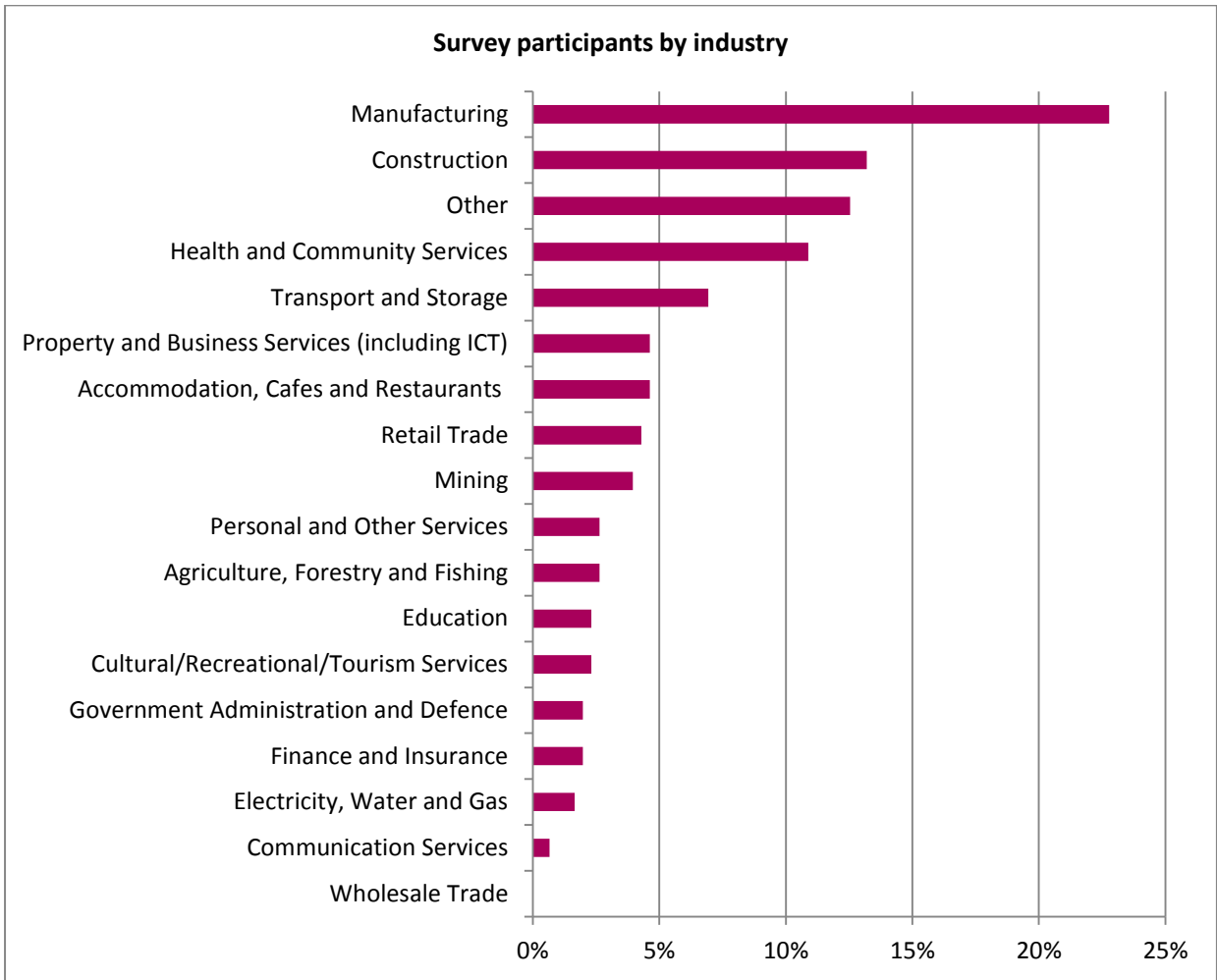
316 responses were received from the survey that was conducted online from Monday 16 July 2012 and closed on Friday 27 July 2012.



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.