

Recommendations of the 2018 Review of the operation of the Queensland workers' compensation scheme – Queensland Government response

#	Recommendations	Legislative amendments?	Government response
Introduction			
1.1	<i>The core architecture of the system should be retained, and any further changes beyond those envisaged by this report should continue to involve stakeholder consultation.</i>	NO	ACCEPT
1.2	<i>The Minister should ensure that OIR publishes information on the disaggregated expenditures by the Regulator and other parts of the Office of Industrial Relations dealing with workers' compensation and safety, separate from the Parliamentary Estimates process, in a format that is friendly to users.</i>	NO	ACCEPT IN PRINCIPLE Information is provided to insurers on the breakdown of funding for workers' compensation and work health and safety regulatory services including any significant grants paid
1.3	<i>The Minister for Industrial Relations and the Attorney-General should consider the interaction between workers' compensation legislation and the Civil Liability Act 2003, in consultation with stakeholders, and put forward any legislative changes that are consequently necessary.</i>	NO	UNDER CONSIDERATION Watching brief being maintained
Who is a worker? Access to benefits under the scheme			
3.1	<i>The Government should consider the appropriate handling of experience rating and premiums for workers in labour hire agencies, including the role of injuries in shaping the experience rating for premium purposes of host employers. To do this a committee involving the Office of Industrial Relations (including WHSQ) and WorkCover should be established, and it should consult with relevant stakeholders and seek external input from academic researchers before making a recommendation to the Minister.</i>		Considered as part of the 2023 scheme review
3.2	<i>The Act should be amended to enable coverage of unpaid commercial interns, with exemptions for interns already covered by injury insurance arrangements (including student internships undertaken as part of a course). For the purposes of calculating premiums, employers would be asked to report to WorkCover the number of hours worked by interns who were not covered by other injury compensation insurance. Volunteers for non-profit organisations would not be covered.</i>	YES	ACCEPT Implemented by the <i>Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019</i> .
3.3	<i>The Government should work with other governments towards achieving a common definition across jurisdictions of 'worker' for workers' compensation purposes, that would take account of the potential for some workers, presently treated as independent contractors, to be subject to explanation by more powerful organisations.</i>	NO	ACCEPT IN PRINCIPLE
Claims and benefits under the scheme			

4.1	<i>The Parliament should amend the Act to give insurers the discretion to accept a claim lodged more than 6 months after being assessed by a doctor, if the worker lodges their claim within 20 business days of certification of an incapacity. The Regulator should develop a practice note specifying that it will allow such claims where the medical practitioner uses the Work Capacity Certificate or where the worker can provide other evidence that they did not know before that date that the injury was covered by workers' compensation.</i>	YES	ACCEPT Implemented by the <i>Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019</i> .
4.2	<i>The calculation of normal weekly earnings should be changed, by removing references to modes and medians, and instead avoiding the influence of outliers on the statistics by averaging the middle half of pay periods for calculation purposes.</i>		Considered as part of the 2023 scheme review
4.3	<i>The government should hold consultations with stakeholders regarding the appropriate treatment, in the calculation of benefits over the first 26 weeks, of award entitlements for payments for additional or unsocial hours, with a view to choosing one of three options: abolishing the distinction between award rates and NWE, with a new, intermediate replacement rate; creating a new distinction between overaward and award entitlements and establishing new replacement rates in such circumstances; or maintaining the status quo.</i>		Considered as part of the 2023 scheme review
Psychological and psychiatric injuries			
5.1	<i>The current definition of injury for psychiatric or psychological disorders in the Act should be revised to remove 'the major' as a qualifier for work's 'significant contribution' to the injury, to bring Queensland into line with other jurisdictions.</i>	YES	ACCEPT Implemented by the <i>Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019</i> .
5.2	<i>OIR, in consultation with stakeholders, develop an information booklet for participants that clearly sets out examples of 'reasonable' and 'unreasonable' action for the acceptance of psychological and psychiatric injury claims.</i>	NO	ACCEPT
5.3	<i>The Office of Industrial Relations work with insurers to implement best practice claims management for psychological claims by adopting the principles of the Best Practice Framework for the Management of Psychological Claims in the Australian Workers' Compensation Sector.</i>	NO	ACCEPT
5.4	<i>Early intervention in cases of potential psychological or psychiatric injury should be promoted by requiring insurers (on a 'no prejudice' basis) to cover the costs of treatment for such injuries before liability has been assessed, up to a limit (defined by reference to a time period). These costs would not form part of the experience rating of the relevant employer, if the claim is subsequently rejected.</i>	YES	ACCEPT Implemented by the <i>Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019</i> .
5.5	<i>The requirement for 'no prejudice' early intervention on psychological and psychiatric injuries should be evaluated after two years, with a review including consultation with stakeholders, including mental health experts and action groups. That evaluation should also be considered by the next five-yearly review.</i>		Considered as part of the 2023 scheme review
5.6	<i>The Regulator and insurers should do everything they reasonably can to minimise the number of examiners and providers of psychiatric or psychological services that workers with psychiatric or psychological injuries are required to see.</i>	NO	ACCEPT

Rehabilitation and return to work			
6.1	<i>To enable a focus on more durable return to work, insurers should follow-up workers some time after benefits have ceased, to ascertain their current employment status and their functioning post injury, and identify whether any further action (such as referral to a specific program) is required.</i>		Considered as part of the 2023 scheme review
6.2	<i>Insurers should collect and publish administrative data on durable return-to-work rates as key performance indicators.</i>		Considered as part of the 2023 scheme review
6.3	<i>The efficacy of new durable return-to-work measures in use should be reviewed after several years usage, or at least in the next five-yearly review</i>		Considered as part of the 2023 scheme review
6.4	<i>The Act should be amended to specify that an insurer retains responsibility for rehabilitation and return to work even after the entitlement to compensation ceases for a defined period, to ensure as much as possible that the worker either achieves or has had every reasonable opportunity to achieve a durable return to work.</i>	YES	ACCEPT Implemented by the <i>Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019</i> .
6.5	<i>Insurers should be required to assess the rehabilitation and return to work needs of all workers during the management of a claim and refer them to the accredited program if the assessment identifies a significant risk to the worker's return to work. However, decisions such as these (or any other by the insurer) should be made on the basis of human judgement by staff of the insurer, and not purely on the basis of algorithmic outcomes. An insurer should also be required to refer an injured worker to an accredited RTW program if, at the end of entitlement to compensation, the worker has not achieved a return to work. The entitlement to participate in the program should continue until the worker achieves a durable return to work or the insurer decides that either: the worker is not reasonably participating in the accredited program; or further participation will not reasonably contribute to achieving a durable return to work.</i>	YES	ACCEPT Implemented by the <i>Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019</i> .
6.6	<i>Workers should have a right to request a referral to an accredited return-to-work program.</i>	YES	ACCEPT Implemented by the <i>Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019</i> .
6.7	<i>As assessment should be undertaken within two years (and no later than the next five-yearly review) of the demographic and job history characteristics of workers who lose their jobs sometime after their claim is administratively closed because they had previously returned to work, and an assessment made as to whether any further legislative amendments are required, such as whether it is necessary to expand their entitlement to support beyond what is currently permitted under the Act.</i>		Considered as part of the 2023 scheme review

6.8	<i>The requirement that rehabilitation and return to work coordinators in larger organisations be appropriately qualified should be reintroduced, but with a transition period, partial or full credit for prior relevant training, and consideration given to the inclusion of industry-specific modules in the accredited training.</i>	YES	ACCEPT Implemented by the <i>Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019</i> .
6.9	<i>The Office of Industrial Relations should work in collaboration with insurers to develop a comprehensive plan to support that rehabilitation and return to work coordinators, and encourage uptake in industry, particularly within industry sectors that have a durable return-to-work rate less than scheme average.</i>	NO	ACCEPT
6.10	<i>The Act should be amended to oblige employers that are required to engage a rehabilitation and return to work coordinators (RRTWC) to provide a list of all RRTWCs engaged by the employer, and include in this list the RRTWC contact details and the workplace/s they have responsibility for. This information should be available to the Workers' Compensation Regulator and insurers for the purposes of educating and supporting these officers, and validating requirements.</i>	YES	ACCEPT Implemented by the <i>Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019</i> .
6.11	<i>WorkCover should hold detailed consultations with the Office of Industrial Relations and stakeholders, as well as with its own employees, on ways in which its regional presence can be improved, with the objective of having a discernible proportion of its staff based outside Brisbane by the time of the next review.</i>	NO	NOT ACCEPTED
6.12	<i>At the time of the next five-yearly Review (as well as in its annual reports before then), WorkCover should specifically report on actions it has taken to regionalise its operations, the effects and its future plans.</i>	NO	NOT ACCEPTED
6.13	<i>To assist small business to provide sustainable return to work options for injured workers, WorkCover should fund allied health professionals to undertake job task assessments at small businesses.</i>	NO	ACCEPT
Prevention, education and compliance			
7.1	<i>WorkCover and Workplace Health and Safety Queensland (WHSQ) should work together more closely, in particular by WorkCover using timely access of micro-level claims data to inform WHSQ of potential areas for intervention. A joint agency steering committee should also be established administratively to ensure WorkCover has input into prevention initiatives and provide for the report back on prevention initiatives and performance. Where WorkCover detects a pattern or trend that warrants intervention, it should immediately notify and meet with WHSQ, so that a cooperative strategy for intervention can be developed.</i>	NO	ACCEPT
7.2	<i>The Act should be amended to make clear WorkCover's ability to fund prevention initiatives.</i>	YES	ACCEPT Implemented by the <i>Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019</i> .
7.3	<i>Following consultation with stakeholders, the Office of Industrial Relations (including WHSQ) and WorkCover should revise and improve their web presence to make it more accessible and useful to users.</i>	NO	ACCEPT
7.4	<i>Support for the IPaM Advance program should be maintained and expended across those parts of the large business sector with relatively poor performance.</i>	NO	ACCEPT IN PRINCIPLE

7.5	<i>WorkCover, in close consultation with OIR (including WHSQ), should undertake experimental research within sub-samples of its small business clientele to rigorously compare the effectiveness of various policy potential approaches for improving WHS outcomes and claims experience amongst small business. The outcomes of evaluations through that research should inform further policy development within WorkCover in relation to small business. They should also be considered by the next five-yearly review.</i>	NO	ACCEPT IN PRINCIPLE
7.6	<i>If IPaM Advance cannot be extended across the medium business sector, then WorkCover should test policy approaches for medium size businesses using a methodology similar to that described above (regarding follow-up recommendation 7.5) for small business. If that is done, the outcomes of evaluations through that research should inform further policy development within WorkCover in relation to medium-sized businesses. They should also be considered by the next five-yearly review.</i>	NO	ACCEPT IN PRINCIPLE
7.7	<i>WorkCover should jointly fund and run an educational campaign aimed at promoting awareness amongst disadvantaged groups of their rights under workers' compensation legislation. A major part of this should be done in co-operation with Workplace Health and Safety Queensland and/or the Fair Work Ombudsman, making maximum use of joint resources and overlapping interests.</i>	NO	ACCEPT IN PRINCIPLE
7.8	<i>WorkCover should also take steps to ensure that workers in identifiably non-compliant businesses are made aware of their rights, and should consider what steps should be taken to increase awareness among those not covered by any joint program with the FWO who would be at risk of disadvantage as a result.</i>	NO	ACCEPT IN PRINCIPLE
7.9	<i>WorkCover should explore educational programs, including jointly with WHSQ and with relevant trade unions, promoting good practice by employers and workers to minimise the risk of occupational illness and injury, including psychological or psychiatric injury and alerting workers to their rights under safety and compensation legislation.</i>	NO	ACCEPT IN PRINCIPLE
7.10	<i>The Regulator should monitor and evaluate the effects of any new educational programs and consider which, if any, have application in self-insured organisations as well. If it concludes that one or more of them is warranted, it should advise the Minister and hold consultations with the stakeholders to determine the best way of financing and administering it or them.</i>	NO	ACCEPT IN PRINCIPLE
7.11	<i>The Regulator, the Australian Medical Association (AMA) and the Royal Australian College of General Practitioners (RACGP) should jointly develop a course on workers' compensation, occupational therapy and return to work for general practitioners, of approximately 25-30 CPD points, for inclusion in the continuing education registration requirements for general practitioners. The AMA and the Regulator should also explore with professional colleges representing other medical specialist groups the feasibility and desirability of developing related modules for their own continuing education requirements.</i>	NO	ACCEPT IN PRINCIPLE
7.12	<i>The Act should be amended to exempt apologies provided by employer representatives following a workplace injury from being considered in any assessment of liability.</i>	YES	ACCEPT Implemented by the <i>Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019</i> .

7.13	<i>Education of employers should give special attention to the benefits for workers and employers of: offering effective support, including but not restricted to apologies, after a workplace injury; the gains for workplace health from good management practice; and the question of how to gain the attention of CEOs and influence strategic decisions affecting the workplace environment.</i>	NO	ACCEPT
7.14	<i>The Minister should commission research investigating the relationship between safety bonuses and safety performance, using linked employee survey data. The results of that research should be taken into account in the next five-yearly review of the scheme.</i>	NO	ACCEPT IN PRINCIPLE
7.15	<i>WorkCover should improve the compliance of employers with their obligation to pay premiums by improving coordination with the Fair Work Ombudsman. The agencies should discuss whether this is best achieved through better information sharing between FWO and WorkCover or by the secondment of one or more officers from WorkCover to FWO (or vice versa).</i>	NO	ACCEPT
Common law claims			
8.1	<i>Further research should be commissioned by WorkCover and OIR to investigate aspects of improving the operation of the workers' compensation system. Current and future research should be published so informed discussion can follow; where it contains commercially sensitive information, a version that has had the commercially sensitive information removed should instead be published. Likewise, research commissioned by other stakeholders should be published once commercially sensitive information is removed. It should also be considered by the next five-yearly review.</i>	NO	ACCEPT IN PRINCIPLE
8.2	<i>OIR should closely monitor application of section 236B and, if its implementation does not adequately reflect the government's intention in overturning the Byrne decision and preventing the transfer of liability of head contractors onto WorkCover, the government should be in a position to quickly introduce legislation amendments to implement the intent.</i>	NO	ACCEPT
8.3	<i>Data on the distribution of common law payouts, between plaintiffs and legal expenses at the time of settlement, should be collected on a confidential basis by an agency independent of the parties. That agency (or an approved organisation contracted for that purpose) should publish annual summaries of the data including breakdowns by size of settlement, type and size of employer and core demographics of plaintiffs.</i>	NO	NOT ACCEPTED Existing safeguards in the <i>Legal Profession Act 1997</i> govern the relationship between solicitors and workers
Self-insurance			
9.1	<i>The Regulator should encourage stakeholder input into the process of licence renewal for individual self-insurers, including by advertising for submissions when determining whether an employer is fit and proper to be a self-insurer. It should also survey injured workers in the lead-up to licence renewal.</i>	NO	ACCEPT IN PRINCIPLE
9.2	<i>The Regulator should, jointly with other parts of OIR (including WHSQ) and WorkCover, undertake or commission survey research comparing the post-injury experience of workers under 'early intervention' programs and in more conventional employers. The outcomes of that research should inform future policy development in relation to 'early intervention' programs. It should also be considered by the next five-yearly review.</i>	NO	ACCEPT IN PRINCIPLE

9.3	<i>The Act should be amended to require all injuries to be reported to the relevant Insurer, with no exemption for self-insurers. The insurer should then pass that information to the Regulator.</i>	YES	ACCEPT Implemented by the <i>Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019</i> .
9.4	<i>The question of whether any information regarding the injured workers rights must be provided to all injured persons on notification of an injury should be considered at the next five-yearly review.</i>	NO	ACCEPT
<i>The changing nature of work and the 'gig economy'</i>			
10.1	<i>The coverage of the Act should be redefined to include any person engaged via an agency to perform work under a contract (other than a contract of service) for another person. This would exclude employees of licensed labour hire businesses and employees of firms that engage contractor, and specify that it applied where at least two parties were in Queensland at the time the work was undertaken.</i>		UNDER CONSIDERATION Considered as part of the 2023 scheme review. Action on this recommendation will be in line with the Decision Impact Assessment Statement.
10.2	<i>Intermediaries or agents who engage any person to perform work under a contract (other than a contract of service) for another person should be required to pay premiums, based normally on the gross income received by the intermediaries or agencies.</i>		UNDER CONSIDERATION Considered as part of the 2023 scheme review. Action on this recommendation will be in line with the Decision Impact Assessment Statement.
10.3	<i>The Regulator should have the capacity to exempt intermediaries or agents from the obligation to rehabilitate injured workers. This would normally be done unless the Regulator considered that the agent had the capacity to perform this role. In such circumstances, injured agency workers would immediately come within the scope of WorkCover's proposed extended return to work program, referred to in recommendation 6.5.</i>		UNDER CONSIDERATION Considered as part of the 2023 scheme review. Action on this recommendation will be in line with the Decision Impact Assessment Statement.
10.4	<i>The Office of Industrial Relations and WorkCover should manage a two-pronged information campaign, designed to build awareness of new arrangements for 'gig economy' workers, making use of both the processes by which workers are signed up to platforms, and the online environment that they frequent.</i>		UNDER CONSIDERATION Considered as part of the 2023 scheme review. Action on this recommendation will be in line with the Decision Impact Assessment Statement.

Dispute resolution			
11.1	<i>Free assistance for self-represented appellants should be supported through grant funding from the Queensland government, broadly along the lines of the previous funding of LawRight's QIRC Workers' Compensation Appeals Service. OIR, the QIRC and legal associations should work to devise a mechanism of support for such appellants.</i>	NO	UNDER CONSIDERATION
11.2	<i>The Regulator should put in place procedures to require it to consult with the relevant employer before conceding an appeal in the QIRC.</i>	NO	ACCEPT
Conclusion			
12.1	<i>The next five-yearly review should encompass both OHS and workers' compensation in Queensland.</i>	NO	NOT ACCEPTED