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**A SUCCESSFUL BALANCE IN WORKERS
COMPENSATION?
THE QUEENSLAND ALTERNATIVE**

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ABSTRACT

In 2004 and 2005 the West Australian Labour Government significantly amended the *Workers Compensation and Injury Management Act 1981 (WA)*. These amendments followed a decade of uncertainty for the stakeholders in the workers compensation system. This working paper summarises the changes which made to the *Workers Compensation and Injury Management Act 1981 (WA)* which relate to the statutory income maintenance, injury management and medical entitlements for workers and compares these entitlements to the similar entitlements under the current Queensland workers compensation legislation. The impetus for this research is the frequent comparisons made between the Western Australian and Queensland workers compensation systems. These jurisdictions have similar demographic profiles but quite different statutory provisions and different litigation outcomes.

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INTRODUCTION AND OBSERVATIONS

This paper is a work in progress¹ which attempts to identify the key variances between the Queensland and Western Australian workers compensation systems. It also considers the cost impacts of those differences and confirms that there is an inextricable link between premiums and the level of statutory payments and common law damages available to workers.² It is concluded that ‘you get what you pay for’ and that the difference in average premium rates in Queensland and Western Australia (almost 50% higher in Western Australia) is largely a function of the level of payments available rather than any specific feature of the Queensland scheme. The question arises; why is there a need to compare these two jurisdictions? The answer lies in the parliamentary debates during the second reading speech in relation to the *Workers’ Compensation Reform Bill 2004* (WA). As the Western Australian Labor Government progressed this Bill through Parliament late in 2004 it met considerable opposition from minor party members, in particular the Greens and some independent One Nation members. In order to pass the legislation the Government agreed to a review of the reform bill provisions within 12 months of their operation. The minor party members argued this should include a comparison with the Queensland provisions. The Honourable John Fisher stated:

I first spoke on the workers compensation legislation on 10 September 2002. I have spent quite a lot of time looking at the various workers compensation systems that apply throughout Australia. Queensland currently has the lowest average premium of any Australian State, at 1.55 per cent, and it has done so since 2000. Queensland is the only State in Australia that projects a premium in advance, therefore giving employers the advantage of projecting their budgets accordingly. I believe the system in Queensland is the best system operating in Australia at this time. I want to ensure that the select committee gives full consideration to the way in which the Queensland system operates. If that paragraph is not included in the motion, I will not be satisfied that there has been a thorough investigation of all the opportunities that are available. I believe the existing workers compensation laws are inferior. I believe the proposed legislation is also inferior.³

And he continued:

There was no reason to reinvent the wheel. We are rushing through inferior and bad legislation. I will not use the journalist’s name, but I have been informed that in discussions with Minister Kobelke it was apparent that the minister was quite aware that the Queensland system was far superior to what we are doing here. For the life of me, I cannot understand why we are pushing through legislation that will severely impact on injured workers at no benefit to anybody in this State, other than the insurance companies. I believe that has been well and truly proved. We have received advice from individual barristers and solicitors and from organisations such as the Injured Persons Action and Support Association; we have also received expert advice from the

¹ At the time of writing there are continued changes to both the Western Australian and Queensland systems.

² *National Workers’ Compensation and Safety Frameworks* (2004) Productivity Commission Inquiry Report 307.

³ Hon John Fisher 19 October 6757c-6766a.

Australian Plaintiff Lawyers Association which all tell us the same thing. I am extremely concerned about the reasons for this Government pushing this legislation through. I find it incomprehensible that the union movement in Western Australia would allow this Labor Government to go ahead with this legislation, because it reflects on the very people whom it purports to represent. I think it is an absolute travesty.⁴

Similarly the Honourable Jim Scott declared:

Western Australia has tried to restrict access to common law by a number of gateways and other measures. Incentives are supposed to have been provided by statutory means, but these are rather weak. Western Australia has fared badly when compared to a State like Queensland, which has not tried to restrict common law in this way. Queensland has simplified its legislation and offered employers very much reduced premiums and provided a much better service to injured workers than is the case in this State. The standardised average premium rates as a proportion of total expenditure for Queensland, Western Australia and New South Wales for 2001-02 are interesting reading: the comparative rate was 3.06 per cent for New South Wales, 4.424 per cent for Western Australia and 1.48 per cent for Queensland. Therefore, Queensland's rate was less than half of that in New South Wales and was significantly lower than Western Australia's rate. The direct compensation paid as a proportion of the total expenditure - that is, the money paid into the pockets of injured workers - was 59.4 per cent in New South Wales, 47.5 in Western Australia and 64.5 per cent in Queensland. The Queensland system pays injured workers more and has significantly lower premiums. Western Australia pays workers the lowest proportion of any of the three States mentioned.⁵

Previously the leader of the Government in the Upper House when refusing to explicitly refer to the Queensland system in the terms of reference had said:

It is most certainly the Government's intention that the spirit of Hon John Fischer's amendment be carried. We will certainly consider looking at models on a comparative basis, with inquiry into the Queensland model being one of the objectives of the committee's terms of reference. The terms of reference in the original motion provide ample scope, without having to state it, for a comparison with the State of Queensland. The difficulty is that once a specific jurisdiction is stated, we may limit the committee's capacity to make comparisons with other jurisdictions. The complicated legal Latin terms 'sui generis' and 'ejusdem generis' cover this issue. The more we state the terms of reference of an inquiry, the more we limit those terms of reference. I assure Hon John Fischer that the terms of reference are sufficiently broad to enable a comparison with Queensland and/or any other jurisdiction in not only Australia, but also anywhere in the world.⁶

⁴ Ibid.

⁵ Hon Jim Scott 19 October 2004 6757c-6766a.

⁶ Hon Kim Chance 2 July 2004 4862-4866.

It can be observed that a number of assertions are made about the superiority of the Queensland system over the Western Australian system. The purpose of this paper is to make some preliminary comments about these assertions.⁷ In doing so it is noted that the Queensland workers compensation scheme is a public monopoly scheme whereas the Western Australian scheme is a privately underwritten competitive scheme, and that there are a number of other substantial differences between the schemes. The paper will therefore attempt to identify the key features of the Queensland and Western Australian schemes that appear to have a positive impact on the efficiency and cost effectiveness. The paper will at the same time consider whether the cost efficiencies may have any detrimental effects on worker payments or health outcomes. This paper compares the current legislative frameworks in the respective states and attempts to include a full consideration of the recently amended *Workers' Compensation and Injury Management Act 1981* (WA).⁸

A BRIEF HISTORICAL BACKGROUND TO THE AUSTRALIAN COMPENSATION SYSTEMS

Workers compensation schemes commenced in Australia from about 1902, first in South Australia and then in Western Australia. The concept of a universal statutory sickness and accident scheme is attributed to Germany but the model used for Australian schemes was adopted from United Kingdom legislation. The early legislation in Australia covered restricted groups of workers, usually those classified as being in dangerous industries, but over time the scope of coverage and the level of payments have gradually increased. In general terms, because workers' compensation schemes are funded either from general revenue or employer contributions, an attempt is made to balance the social responsibility of providing financial and medical payments for workers injured in the course of their employment against the cost of those payments on the economy. As a consequence workers compensation schemes are characterised by continuous tension between the various interest groups and stakeholders who advocate for the balance to be weighed in their favour.

There are a number of common features of workers compensation schemes within Australia. Employers are required to obtain insurance to meet their potential liabilities for workplace injuries, the schemes are 'no fault', and entitlements include payments for lost wages, medical expenses and lump sum payments for permanent injury or impairment. Within Australia, the workers compensation scheme structures range from full public monopoly schemes that underwrite the risk and manage the claims, to private insurer based competitive schemes where commercial insurers underwrite the risk and manage the claims. It is noteworthy that the Australian total premium revenue for the employer indemnity (workers compensation) class of insurance for 2001/02 was \$6.3 billion, of which public insurers account for \$5.5 billion or around 85% of the total premium pool.⁹ Western Australia is one of the few States which has retained the private underwriter model.

⁷ This paper is a modified version of a report to Hon Jim Scott by Tony Vaile in satisfaction of a Parliamentary Internship project supervised by Robert Guthrie.

⁸ A summary of the 2004 amendments to the Western Australian Act can be found at <http://www.workcover.wa.gov.au/News/WorkersCompensationChanges.htm>.

⁹ *National Workers' Compensation and Safety Frameworks* (2004) Productivity Commission Inquiry Report 314.

COMPARING COMPENSATION SYSTEMS – LEGISLATIVE BACKGROUND

The following section outlines the key changes to the Western Australian and Queensland workers compensation schemes in the last decade. The schemes are dynamic in nature, undergoing regular reviews with changes to entitlements and threshold requirements. Frequent changes to the schemes make it difficult to conduct comparative analysis and identify the relevant merits of each system. The legislative changes outlined in this paper also highlight the difficulty in conducting comparative analysis between the Queensland and Western Australian workers compensation schemes. Both schemes have undergone multiple significant changes over the past ten years. It is therefore not feasible to conduct longitudinal analysis between aspects of the Queensland and Western Australian schemes due to:

1. Differences in definition of key terms including *worker*, definition of an *injury* and the work relatedness of an injury;
2. The impact of frequent changes in the legislation in both states over the past ten years;
3. The lack of standardisation in performance and reporting metrics to conduct like for like comparisons.

WESTERN AUSTRALIA'S WORKERS COMPENSATION SCHEME – RECENT LEGISLATIVE HISTORY

The *Workers' Compensation and Rehabilitation Amendment Act 1993* was enacted by the Conservative coalition government in 1993 and introduced a number of departures from the previous schemes. In the first place a new dispute resolution system (Conciliation & Review Directorate) introduced, which attempted to implement an apparently informal, non-adversarial system of dispute resolution. In relation to worker payments higher rates of weekly payments for the first four weeks of incapacity were created with the Prescribed Amount (being the total amount payable for weekly payments increased by 13%). Dependents of a deceased worker were able to access 100% of notional residual entitlement in the event of the death of the worker. Lump sum payments under Schedule 2 were expanded to include back, neck and pelvic areas. In what can now be seen as the beginnings of injury management legislation, employers were required to keep a worker's position available for 12 months after the injury. The threshold definition of injury was amended to require that there be an employment contribution to a significant degree to a disease, with limitations placed on stress claims. Journey claims for travel to and from work were removed. An important change was that access to common law claims was restricted subject to serious injury being established, which was dependent upon the worker showing pecuniary loss equal to the prescribed amount or whole body injury of 30%.

The *Workers' Compensation and Rehabilitation Act 1999* commenced operation in October 1999 following the Pearson report of that year. In order to control what was regarded as unacceptable common law claims costs, a number of amendments to payments were made. The prescribed amount again increased by almost 10% and the allowance for medical expenses and vocational rehabilitation expenses was likewise increased by almost 10%. To contain costs a cap on weekly payments and step-down was introduced which was indexed annually, and access to redemption of weekly payments

was broadened to include workers with permanent partial incapacity. Annual indexation of allowances for funerals, wheel chairs, board and lodging, travelling and accommodation was introduced and a rate provided for vehicle running costs. The dependents of deceased workers were given the option of receiving a direct payment or utilising the Trust Fund following the death of a worker. The foregoing represented fairly minor changes to payments. The major change brought about by the 1999 amendments was that workers wishing to pursue common law claims required the agreement or determination on their degree of injury to be recorded by the Director of the Conciliation and Review Directorate. A threshold of 16% injury of the body replaced the previous pecuniary loss threshold. Where the degree of injury was 16% or more, and less than 30% i.e. a 'significant injury', the worker was required to elect to retain their right to common law. Where the degree of injury was 30% or more, there would be no cap on the amount of damages and statutory payments would continue.¹⁰

QUEENSLAND'S WORKERS COMPENSATION SCHEME – RECENT LEGISLATIVE HISTORY

The *WorkCover Queensland Act 1996* was amended in July 1997 to provide a change to the definition of 'worker', to restrict access to only those who could prove that they were a PAYE taxpayer. Changes to the definition of 'injury' were made, from requiring employment to be 'a significant contributing factor' causing the injury, to being 'the major contributing factor' to the injury. In 1999 *WorkCover Queensland Amendment Act 1999* reversed the changes to the definition of 'injury' from requiring employment to be 'the major contributing factor' causing the injury to being a 'significant contributing factor' to the injury. Likewise in 2000 there was a change to the definition of 'worker' from a PAYE taxpayer to a person working under a contract of service, regardless of their taxpaying status. In July the *WorkCover Queensland Amendment Act 2001* resulted in an increase in the lump sum benefit payable to dependents on the death of a worker to \$250,000, and an increase in the maximum statutory benefit able to be received by an injured worker to \$150,000. In July 2003 the *Workers' Compensation and Rehabilitation Act 2003* established the Workers' Compensation Regulatory Authority, Q-COMP, as a statutory body to regulate the workers compensation scheme in Queensland. A further amendment to the definition of 'worker' was made to attempt to provide greater certainty in determining access to compensation by applying a 'results test' in addition to the existing legislative criteria for determining whether a person is a worker. Under the 'results test' a person will be considered a 'worker' unless it can be shown that the person meets all the elements of the 'results test'

From the foregoing it can be observed that Queensland at certain times has had a higher threshold requirement for work contribution to injury and likewise appears to have had narrower access for claimants on the basis of a restrictive definition of worker, compared to the Western Australian definition which has over the same period included access for a particular category of independent contractors. Recent amendments in Queensland inserting the 'results test' may have widened access. This brief legislative background also illustrates the dynamic nature of compensation systems and highlights the continued focus on access to compensation payments through the changes made to key definition provisions.

¹⁰ For a general discussion of the period 1993 -2001 see R. Guthrie and C. Huntly 'Workers Compensation and the Western Australian Liberal Government 1993-2001' (2001) 14(2) *Australian Journal of Labour Law* 177-189.

AN OVERVIEW OF THE FINANCIAL PERFORMANCE OF THE SCHEMES

World wide, compensation schemes have been shown to be highly volatile. Public and privately underwritten schemes have frequently operated in deficit where the premium income has not been adequate to pay the costs of claims (and other expenses).

Workers compensation is a complex class of insurance, particularly in relation to predicting the ultimate costs of claims. The complexity arises due to the long periods of time that can elapse between when an injury or disease occurs and when it is reported and subsequently when a claim or dispute occurs. Diseases that have long latency periods such as asbestosis and chemical exposure claims cause particular problems with estimates.

The basic requirement for privately underwritten schemes to be viable is that insurers need to generate an adequate return on capital at an acceptable level of risk. As shown in Table 4 (Financial Overview of the Western Australian Workers Compensation System), insurers have not consistently achieved an apparently adequate return on capital. For example, throughout the mid to late 1990s insurers apparently made significant losses. In the period between 1994 and 1995 insurers in Western Australia made an aggregate loss of \$302.3M, representing an aggregate return of negative thirteen percent (-13%). (Return for the purposes of this paper is defined as a percentage of profit/loss on gross earned premium.)

A review of the Western Australian scheme's financial performance over the past ten years indicates that there is a high degree of volatility in profitability. Year to year performance has ranged from a return of -13% in 1994/95 to highs of 24% in 2000/01. There are a number of factors that contribute to the variability in financial performance including market behaviour of insurers, cost of capital, returns on investment income, impacts of changes to the legislation, level of payments and rate of claims. Perhaps the most significant variable relates to insurer behaviour, where in periods of strong returns insurers tend to seek a greater market share, resulting in greater competition, which often leads to rate erosion and ultimately premium levels that are less than adequate to support profitability. This phenomenon is commonly referred to as 'the insurance cycle'. It is symptomatic of a private insurance model subject to competitive pressures, but may not work in the same manner with a monopoly publicly underwritten scheme.

Table 3 (Financial Overview of Queensland Workers' Compensation System) captures the financial performance of the Queensland workers compensation scheme for the period of 1999 – 2003. It can be observed that even within a monopoly publicly underwritten system it can be difficult to accurately predict the ultimate costs of claims and obtain premium adequacy from year to year. It is also noteworthy that significant underwriting losses occurred in the 2002 year and 2003 year with a net loss of \$73M and \$22M respectively. This performance information seems to have been noticeably absent from the comments made by the parliamentarians in the above-quoted comments in the introduction. Despite the large loss in 2002 when average premium rates remained unchanged, similarly average premium rates did not increase after the additional loss in 2003. The current average premium rate (1.55%) seems unsustainable in the future given the current level of claims cost. That said, monopoly schemes have the advantage of being able to weather cycles in volatility in claims rates or changes caused by legislative amendments as there is no need to be concerned with market share. Premiums may be

maintained at stable rates where there is evidence of a return to sustainable profit levels. On the other hand, where the evidence of future profit levels are not to hand the temptation for Governments to maintain premium levels at unsustainable levels must be strong in the face of electoral and stakeholder (usually employer) pressure. In the long term, where the premium levels in monopoly schemes are maintained at unsustainably low levels, the system becomes 'unfunded' in the sense that premium income is unable to support future claims. At this point Governments invariably attack worker payments in an effort to reduce scheme costs. Alternatively premiums are raised to unacceptably high levels. Unfunded losses are either clawed back by premium increases or subsidised by Government sources, namely taxation income. In the end result, if a monopoly scheme retains low premium rates employers benefit from the low rates, whilst the general public subsidises the scheme through taxation support. By contrast in theory, in the privately underwritten schemes where premiums levels are to some extent determined by the market forces, the potential for the insurers to sustain losses is maintained. Losses sustained cannot be clawed back in Western Australia because maximum premium rates are set by a Government committee which does not (in theory) have regard for past losses and sets premiums on the basis of claims costs. If losses occur in the private scheme this in theory arises because the insurers have discounted premiums too far below acceptable levels in order to gain market share. The evidence that market share has driven some insurer behaviour during the 1990s coincides with the marked decline in the number of licensed insurers in Western Australia in the past decade from around 30 insurers in the early 1990s to around a dozen by the end of the decade.

It follows that one of the advantages of a monopoly scheme is stability in premium rates with higher levels of control over rate setting and the ability to control rates throughout adjustments caused through legislative change or unexplained claims fluctuations. This strength may also be a weakness if it masks structural flaws in the scheme, such as where changes to access thresholds open up claims by new clusters of workers. This may occur where the definition of worker is altered or where the legislation is amended to provide payments for fresh impairments/disabilities such as has occurred with stress claims, HIV/AIDs and some other diseases not previously covered.

Table 3: Financial Overview of the Queensland Workers Compensation System

Estimated Profit and Loss in the Queensland Workers Compensation System					
Accident Year Ending 30 June					
	1999	2000	2001	2002	2003
	\$'000	\$'000	\$'000	\$'000	\$'000
Statement of Financial Performance					
Underwriting Result	48,036	51,597	131,704	(66,544)	(18,356)
Investment Income	226,287	275,410	133,388	(64,641)	(28,424)
Operating result before income tax equivalents	348,775	327,007	265,092	(131,185)	(46,780)
Operating result after income tax equivalents	222,251	219,446	191,950	(73,366)	(22,172)
Statement of Financial Position					
Total Assets	2,410,616	2,547,403	2,443,502	2,163,077	2,148,359
Total Liabilities	2,110,618	2,027,959	1,843,686	1,696,627	1,704,238
Net Assets	299,998	519,444	599,816	466,450	444,301

Table 4: Financial Overview of the Western Australian Workers Compensation System

Estimated Profit and Loss in the Western Australian Workers Compensation System					
Accident Year Ending 30 June					
	1999	2000	2001	2002	2003
	\$M	\$M	\$M	\$M	\$M
Gross earned premium	458.610	592.553	621.614	585.164	587.328
Cumulative claim payments	335.812	303.082	246.155	176.689	75.848
Outstanding estimate	53.658	113.461	182.332	263.159	406.214
Net claims incurred	389.470	416.544	428.487	439.847	482.063
Underwriting profit/loss	69.140	176.009	193.127	145.317	105.265
Commission	13.758	17.777	18.648	17.555	17.620
Other expenses	62.830	66.366	78.323	76.071	88.148
Estimated investment income	57.090	51.620	53.718	55.148	66.840
Estimated profit/loss - \$	49.643	143.486	149.874	106.838	66.337
% in gross EP	11%	24%	24%	18%	11%
Loss ratio ¹¹	85%	70%	69%	75%	82%

¹¹ Loss Ratio is a measure of profitability calculated by dividing the losses by the premium, e.g., a premium of \$100,000.00 with claims costs of \$50,000.00 has a loss ratio of 50%.

Table 5: Western Australia & Queensland Scheme Comparison 2002/03

Western Australia & Queensland Scheme Comparison 2002/03		
Measure	Western Australia	Queensland
Number of claims	37,988	72,989 ¹²
Average cost of claims	\$11,773 (\$482.1M)	\$7,480 (\$546M)
Number of common law claims	510 ¹³	3017
% of common law claims v total	1.3% of claims	3.6% of claims
Average cost of common law claims	\$264,085 ¹⁴	\$99,270

As indicated previously, it is not feasible to conduct a strict comparative analysis of Western Australia's and Queensland's workers compensation schemes' relative performance due to a number of factors including the regular changes in legislation in each jurisdiction, difference in definitions of key terms including 'worker' and 'injury', and a lack of standardisation in reporting of scheme metrics.

It is however possible to draw some broad comparisons from the data from the respective schemes. Queensland has a significantly higher number of claims normalised to claims exposure than Western Australia. It is unclear why claim numbers are significantly higher in Queensland; the claims frequency could be impacted by business mix (higher proportion of high hazard industries), level of collective bargaining processes, education and communication about the rights of workers.

As noted in Table 5 (Western Australia and Queensland Scheme Comparison 2002/03), there is a substantial variation in the average claim size between Western Australia (\$11,773) and Queensland (\$7,480); this represents a 35% difference in average claim size. This large variation is a significant driver to the lower premium costs in the Queensland scheme. A number of factors could contribute to the lower average claim size in Queensland; it is likely that the factor that has the greatest impact is the step-down provisions for weekly payments in Queensland which are often implemented to encourage¹⁵ workers to return to work as early as possible. These aspects are discussed in more detail further in this paper. Average claims costs are also affected by the average cost of common law claims which in Queensland (\$99,270) is less than half that of Western Australia (\$264,085). This figure is to some extent explained by the higher number of claims overall.

¹² Financial Overview of the Queensland Workers' Compensation System.

¹³ Premium Rates Committee of Western Australia 2003 – 2004.

¹⁴ *Report on the Implementation of the Labor Party Direction Statement in Relation to Workers' Compensation*, July 2001.

¹⁵ Some commentators would argue that 'encourage' is inappropriate as often workers are driven by financial necessity to return to work, sometimes too early for full medical recovery, resulting in further injury or recurrence of injury.

While the average costs of common law claims in Queensland are low, the frequency of 3.6% of total claims is much higher than Western Australia at 1.3% of total claims.

OTHER SCHEME COST FACTORS

Two factors that have a considerable impact on the overall costs of workers compensation schemes relate to the investment income return that insurers generate from premiums and the administration costs related to handling claims.

Investment income is created because premiums are typically paid at the beginning of an insured period and claims are incurred gradually over a period of time. The time lag between earning premium and paying claims creates the opportunity to invest premium funds and earn income. In Queensland the scheme reported a net loss of \$65 million in investment income in 2002 followed by a net loss of \$28 million in 2003. These results are obviously very poor and add to the costs of operating the scheme.

There is no specific data available to compare the performance of insurers in Western Australia with the performance of the Queensland scheme. This is primarily because the Western Australian system is privately underwritten and access to that sort of information is not available. However the Premium Rate Committee (PRC) in Western Australia assumes that insurers achieve a certain level of investment income and includes that (anticipated) return in determining the recommended (gazette) industry rates. The level of investment income is actuarially assessed and reported in the PRC of Western Australia Actuarial Assessment of the Recommended Premium Rates. For example, in the 2002 year it was estimated that investment income was \$55.15 million (on \$585.16 million Gross Earned Premium). In the 2003 year it was estimated that the investment income was \$66.84 million on \$587.33 million (Gross Earned Premium).¹⁶ This data suggests that either the estimated investment returns in Western Australia are overstated (and therefore inflating reported insurer profitability) or if the data is accurate the privately underwritten market in Western Australia has achieved markedly better returns than the Queensland scheme. A third alternative is that the income from investments is in fact less than the PRC projection but still more than Queensland.

The second major area of potential costs variation relates to the costs associated with administering the scheme and handling claims. A review of these 'administration costs' suggests that Queensland has a significantly higher (28.8% in 2001/02) level of administration costs compared to Western Australia (19.5% in 2001/02).¹⁷ It is interesting to note that the recommended industry rate (gazette) in Western Australia allows 12% of Gross Written Premium (GWP) for insurer expenses (administration and claims handling costs). This suggests that it is likely that insurer profitability may be overstated in Western Australia because the allowance in the gazetted rate for administration costs is significantly less than the actual administration costs. These two indicators of insurer performance also point to issues of transparency. The monopoly insurer model is by its nature more transparent because the data on costs and investments is actual data rather than imputed data. The danger with imputed data is that it may lack accuracy.

¹⁶ *Premium Rates Committee of Western Australia Actuarial Assessment of the Recommended Premium Rates* (2004/05) 14.

¹⁷ *National Workers' Compensation and Safety Frameworks* (2004) Productivity Commission Inquiry Report 125.

The relatively large variance in administrative costs suggests that there may be greater efficiency within the privately underwritten model in Western Australia compared to the public monopoly model in Queensland, however no conclusive statement can be made in relation to this issue because as noted the administrative costs in Western Australia are imputed rather than actual.

Scheme Structural Comparison

Table 6 (Comparison of Workers Compensation Arrangements) provides a comparison of the major components of the Workers Compensation schemes in Queensland and Western Australia. The comparison includes amendments to the Western Australia Workers' Compensation scheme effective from July 2005.¹⁸

Table 6: Comparison of Workers Compensation Arrangements

Demographic Information		
	Western Australia	Queensland
Area (Square kilometres)	2,525,000	1,727,000
Population (Sept 2003)	1,959.7M	3,817.0M
Population, 15 years and over (June 2003)	1,553.9M	3,007.5M
Labour Force (Oct 2003)	1,026.9M	1,958.1M
Unemployment Rate (Oct 2003)	6.1%	6.3%
Gross Earnings (Sept 2003 - Public sector employees)*	\$1,803.8M	\$3414.5M
(Sept 2003 - Private sector employees)	\$5,880.0M	\$10,632.0M
Average weekly earnings (All employees - Aug 2003)	\$720.90	\$664.60
* ABS data on total gross earnings is no longer available. This data is now recorded separately for private and public sector employees.		

¹⁸ See <http://www.workcover.wa.gov.au/News/WorkersCompensationChanges.htm> for a full summary of the changes. See also R. Guthrie 'An Overview of the 2004 Workers Compensation Reforms' (2004) 2(4) *Western Australian Quarterly Bulletin of Economic Trends* 39-57.

Workers Compensation Scheme Details			
	Western Australia	Queensland	Significant Differences
Scheme Name	WorkCover Western Australia	Workers Compensation Scheme of Queensland	
Workers Compensation Legislation	<i>Workers Compensation and Injury Management 1981</i>	<i>Workers Compensation and Rehabilitation Act 2003</i> (from 1 July 2003).	
Responsibility held for OH&S legislation and related legislation	No	No	
Fund type	Approved insurers (essentially private insurance. Loading 100% allowance on set premium and full discounting allowed. The Workers Compensation and Rehabilitation Commission may approve a loading in excess of 100%).	Central Fund	Western Australia privately underwritten scheme versus Queensland publicly underwritten scheme.
Scheme's funding position at 30 June 2003 and/or 30 June 2002	Approved (private) insurers required to comply with APRA prudential requirements.	<u>30/06/03*</u> ** Assets: \$2,149M **Liabilities: \$1,704M Funding Ratio: 126% <u>30/06/02*</u> Assets: \$2,163M Liabilities: \$1,697M Funding Ratio: 127.5% *WorkCover Queensland only (does not include self-insurers) **WorkCover 2002-2003 Annual Report.	Queensland scheme is not required to comply with APRA prudential requirements in accordance with the Insurance Act 2001 Amendments. This difference impacts the cost of capital and therefore the return on investment.

Workers Compensation Scheme Details			
	Western Australia	Queensland	Significant Differences
Employer excess	No excess - scheme coverage from first day of incapacity.	4 days excess plus day of injury. Option to 'buy-out' excess at the greater rate of 8.5% of premium or \$10.	No employer excess available in Western Australia. This is a significant difference that impacts on claims costs. In Queensland a portion of claims costs is shifted to the employer through the excess. Further research is required to understand the cost impact of the excess. It is possible to conjecture that this may lead to a number of claims behaviours, such as cost shifting to Medicare by workers who are encouraged not to claim directly against an employer, and the use of sick leave instead of workers compensation to reduce or maintain claims rates.
Number of reported claims per financial year	01-02: 18,842 00-01: 19,647 99-00: 23,129 98-99: 24,835 97-98: 27,465 96-97: 27,872 95-96: 28,439 NB: This data represents the number of lost-time claims (one day/shift or more). NB: Snapshot figure taken in December 2002.	02-03: 84,551 01-02: 85,407 00-01: 85,340 99-00: 82,335 98-99: 80,089 97-98: 79,859 96-97: 85,110 95-96: 93,008 94-95: 100,530 NB: This data represents all reported claims including those of less than 5 days and includes self insured claims.	Frequency of claims in Queensland is significantly higher than in Western Australia after normalising the data for wages. Further research is required to understand the causal factors that contribute to the difference in claims frequency. The difference in data is only partly explained by demographic differences.

Workers Compensation Scheme Details			
	Western Australia	Queensland	Significant Differences
Average premium rate per financial year	03-04: 2.34% 02-03: 2.47% 01-02: 2.63% 00-01: 2.97% 99-00: 3.09% 98-99: 2.54% 97-98: 2.40% 96-97: 2.67% 95-96: 2.61% 3.44% between 01/07/99 and 31/10/99 3.09% between 01/11/99 and 30/06/00	03-04: 1.55% 02-03: 1.55% 01-02: 1.55% 00-01: 1.75% 99-00: 1.85% 98-99: 2.145% 97-98: 2.145% 96-97: 2.023% 95-96: 1.85% This is the target rate inclusive of 10% surcharge 10% surcharge introduced 01/01/96 Surcharge removed from periods of insurance after 01/07/99 Excludes GST NB: All rates are inclusive of stamp duty	Average premium rates are significantly less in Queensland. Further research is required to understand the causal factors that contribute to the difference in average premium rates. As noted above the premium rates in Queensland do not appear to have moved despite recorded losses. In addition the employer excess may have some impact on this issue.
Do provisions for self insurance exist?	Yes	Yes	
Number	29 self-insurers – required to lodge bond with authority	24 self-insurers Prudential requirements. 2000 full time workers for new applicants	
Criteria	Prudential Requirements	Prudential Requirements	

Coverage			
COVERAGE	Western Australia	Queensland	Significant Differences
Definition of 'remuneration' for the purpose of defining premium	<p>All gross wages; salaries; remuneration; commissions; bonuses; overtime; allowances and the like; directors' fees and all other payments paid (whether at piece work rates or otherwise, and whether paid in cash or in kind) to, or in relation to, a worker before the deduction of income tax.</p> <p>Termination payments; retirement pay; retrenchment pay in lieu of notice; superannuation payment(s); pensions; golden handshakes or weekly payments of compensation do not have to be declared.</p>	<p>'wages' means the total amount paid, or provided by, an employer to, or on account of, a workers as wages, salary or other earnings by way of money or entitlements having monetary value, but does not include-</p> <p>(a) allowances payable in relation to any travelling, car, removal, meal, education, living in the country or away from home, entertainment, clothing, tools and vehicle expenses; and</p> <p>(b) contribution by an employer to a scheme for superannuation payments for a worker, other than contribution made from money payable to the worker; and</p> <p>(c) lump sum payments on termination of a worker's services for superannuation, accrued holidays, long service leave or any other purpose; and</p> <p>(d) an amount payable under section 66 of the <i>Workers' Compensation Rehabilitation Act 2003</i> – employer's liability for excess period.</p> <p>Any payments and allowance such as additional superannuation, motor. Vehicle usage, etc, provided under salary sacrifice arrangements are declarable.</p>	<p>Significant Difference. This is also reflected in the lower AWE in Queensland; the definition in Western Australia would suggest higher compensation through higher weekly payments due to the broader definition in Western Australia.</p>
Number of workers covered	<p>01-02: 815,699</p> <p>00-01: 797,902</p> <p>99-00: 779,838</p> <p>98-99: 746,741</p> <p>NB: From ABS data</p>	<p>02-03: 1,713,000</p> <p>01-02: 1,652,800</p> <p>00-01: 1,583,500</p> <p>Based on ABS data (employed wages and salary earners, Queensland) as at February 2002</p>	

Coverage			
COVERAGE	Western Australia	Queensland	Significant Differences
<p>Definition of ‘worker’ for purpose of coverage relationship to employment</p> <p>*unless otherwise stated, information provided applies to both Comcare and Seacare</p>	<p>Contract of service</p> <p>‘Contract for service</p> <p>In some situations, contractors and sub-contractors also may be defined as “workers”, depending on the circumstances of their working arrangement’</p>	<p>A worker is an individual under a contract of service. Schedule 2 of the Act mentions persons who are and are not ‘workers’.</p> <p>Workplace Personal Injury Insurance is available for Eligible Persons (not deemed workers).</p>	<p>Currently essentially similar. Note the definition of a worker in Queensland has been changed in 1997, 1999 and again in 2003.</p>
<p>Deemed workers</p>	<p>Included</p>	<p>Not included</p>	<p>Significant difference in that deemed workers are covered in Western Australia but not in Queensland, therefore greater claims costs will be generated in the Western Australia scheme.</p>
<p>Definition of ‘injury’ for the purpose of coverage</p> <p>- Relationship to employment</p> <p>- Contribution of employment</p> <p>- Aggravation, acceleration, etc.</p> <p>- Diseases</p> <p>- Recess claims</p>	<p>‘... a personal injury by accident arising out of or in the course of the employment...’</p> <p>To a significant degree (for disease only)</p> <p>Included</p> <p>Included</p> <p>On/off</p>	<p>‘... a personal injury arising out of, or in the course of, employment...’</p> <p>A significant contributing factor</p> <p>Included</p> <p>Included</p> <p>On/off worksite</p>	<p>Currently essentially similar. Note the definition of injury in Queensland was modified in 1997 and again in 1999.</p> <p>Essentially similar.</p>
<p>- Journey claims – to/from work</p>	<p>Not included, however workers are covered for injury during journeys in the course of employment or at the direction of the employer</p>	<p>Included (with some restrictions)</p>	<p>Significant difference. Further research is required to understand the impact on cost of claims.</p>

Coverage			
COVERAGE	Western Australia	Queensland	Significant Differences
- Stress specific exclusion factors	The following exclusions apply, except when the actions of the employer are 'unreasonable and harsh': a) the worker's dismissal, retrenchment, demotion, discipline, transfer or redeployment b) the worker's not being promoted, reclassified, transferred or granted leave-of-absence or any other benefit in relation to the employment; and c) the worker's expectation of a matter or a decision by the employer in relation to the matters outlined above.	Included, except where the Psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances – (a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment; or (b) the worker's expectation or perception of reasonable management action being taken against the worker; or (c) action by an insurer in connection with the worker's application for compensation.	Essentially similar.
Industrial deafness threshold	10% (Above baseline hearing loss previously assessed)	5%: Application for compensation must be made (a) while the claimant is a worker under the Act, or (b) where the claimant would ordinarily be a worker but is temporarily unemployed, or (c) within 12 months after the claimant's formal retirement from employment. The industrial deafness is to be attributed to the worker's employment in Queensland as a worker (a) for period(s) of employment in Queensland totalling at least 5 years, and (b) the employment was at location(s) where the noise level was a significant contributing factor to the industrial deafness. A further application may be considered only if lodged more than 3 years after the previous application, and claimant has sustained a further hearing diminution of more than 1%.	Significant difference in threshold and conditions for a compensable claim. Further research is required to understand the impact this difference has on claim costs. The lower Queensland threshold suggests greater access, however the need to claim at specific times may limit access.

Coverage			
COVERAGE	Western Australia	Queensland	Significant Differences
Payment cessation provisions	<p>Section 5 of the Act defines 'notional residual entitlement' Section 24A – Lump sum compensation for noise induced hearing loss Section 56 – Entitlements to weekly payments ceasing on account of age.</p> <p>Section 68 –Calculation of lump sum Section 198 – Weekly payments after the age of 64 Schedule 5 – Where a worker attains the age of 65 she/he is entitled to receive the 'supplementary amount' if it can be proved the worker was going to work beyond the age of 65 (until age 70). Workers suffering injury after age 64 years have a period of one year for payment of weekly compensation from the date of Injury. Special provisions Apply to workers suffering asbestos-related diseases.</p>	<p>There are no provisions in the Act that refer to retirement age. Entitlement to payments cease when:</p> <p>(a) incapacity because of the injury ceases; or</p> <p>(b) worker has received weekly compensation for 5 years of incapacity; or</p> <p>(c) the statutory maximum compensation amount is reached is now \$174,625 (this includes lump sum for permanent impairment, and weekly compensation amounts); or</p> <p>(d) 28 days after an offer of lump sum compensation for permanent impairment is made; or</p> <p>(e) WorkCover and the worker agree on an amount that redeems WorkCover's liability to make weekly payments; or</p> <p>(f) when entitlement to weekly compensation is reviewed and the entitlement is ceased (e.g. no longer incapacitated due to injury)</p>	<p>Significant difference. Further research required to understand the impact this difference has on claim costs.</p> <p>Note the Western Australia legislation is arguably contrary to EEO legislation in that it discriminates against employees who are over the age of 65.</p>
Cross-border cooperative arrangements	<p>National principles endorsed by all State and Territory workers compensation jurisdictions and ratified by the Heads of Workers Compensation Authorities, aims to eliminate the need for employers to obtain workers compensation coverage for a worker in more than one jurisdiction. The agreed commencement date of the legislation, as agreed by all jurisdictions, is July 1 2004.</p>	<p>There are no formal cooperative arrangements with other jurisdictional compensation authorities. From 1 July 2003 the <i>Workers Compensation and Rehabilitation Act 2003</i> introduces new cross-border provisions (sections 113 and 114) under which compensation is only payable if employment is connected to Queensland. There are a new series of tests to determine whether employment is connected with Queensland.</p>	<p>Not assessed.</p>

Weekly Payments			
	Western Australia	Queensland	Significant Differences
Weekly payments rates	<p>A cap on weekly payments of \$1446.00 applies for the duration of all claims. This amount is indexed annually (every 1 July). For workers whose earnings are prescribed by an industrial award this represents twice the average weekly earnings as calculated by the Commonwealth Statistician.</p> <p>First 13 weeks of claim: Weekly payments will consist of the rate of the worker's average weekly earnings payable under the relevant industrial award, plus any over award or service payment paid on a regular basis including overtime, bonuses or allowances up to a maximum of \$1446.00. Overtime, bonuses or allowances are averaged over the 13 weeks before the injury occurred.</p> <p>14th week on award payments: Weekly payments consist of the rate of weekly earnings payable under the relevant industrial award, plus any over award or service payment paid on a regular basis, but excluding overtime, bonuses or allowances. Maximum payment is \$1446.00.</p> <p>Minimum rate: Subject to the cap of \$1446.00 the minimum rate of weekly earnings payable for the appropriate classification under the relevant award. Workers whose earnings are not prescribed by an industrial award.</p> <p>First 13 weeks of claim: Weekly payments will consist of the worker's average weekly earnings (including overtime, bonuses and allowances averaged over the year before the injury occurred, up to a maximum \$1446.00</p> <p>14th week on award: Weekly payments 'step down' to 85% of the worker's average weekly earnings; maximum payment is \$1446.00.</p> <p>Minimum rate: Subject to the cap of \$1021.60, the minimum rate of weekly earnings payable under the Minimum Conditions of Employment Act 199</p>	<p>=26 weeks: Workers under award or industrial agreement – the greater of: - 85% of the worker's normal weekly earnings (NEW); or (b) amount payable under the worker's award or agreement. Workers not under award or agreement – the greater of: - 85% of New (b) 70% of QOTE QOTE (Queensland Ordinary Time Earnings) is currently \$817.50</p> <p>>26 weeks: All workers – the greater of: - 65% of NEW (b) 60% of QOTE</p> <p>104 weeks to 5 years: Workers with work-related impairment (WRI) of more than 15% - the greater of: - 65% of New (b) 60% of QOTE Workers with WRI Less than or equal to 15% receive an amount equal to the Department of Social Security single-person pension rate. Total amount payable for weekly payments is \$161.34.</p>	<p>Significant Difference. Queensland scheme has three step-downs in weekly payments versus one step-down in Western Australia. Note after 26 weeks of weekly payments in Queensland the payments drop to 65% of NEW or 60% of QOTE.</p> <p>Weekly payments are capped in Western Australia but not in Queensland.</p> <p>Note the significant difference in the Queensland scheme regarding treatment of long duration claims particularly for workers with relatively low levels of impairment (less than 15%). The payments to this class of worker are substantially less than those available in Western Australia.</p> <p>It is expected that the step-down provisions in Queensland would have a significant impact on costs both through the actual reduced costs of payments, and perhaps more significantly the impact on behaviour of injured workers who are losing substantial earnings while on workers compensation payments. Further research is required to understand the impact this difference has on claim costs. There is also likely to be significant influence on the common law claims – it is suggested that the lower weekly payments may be an incentive for earlier settlement of claims at lower rates in Queensland.</p>

Coverage			
COVERAGE	Western Australia	Queensland	Significant Differences
Basis for determining weekly payments	<p>The cap on weekly payments of \$1446.00 is obtained by multiplying by twice the average of the amounts that the ABS publishes as 'All employees average weekly total earnings in Western Australia' for pay periods ending in the months of May, August, November and February preceding the financial year. This amount is indexed annually (every 1 July).</p> <p>Workers whose earnings are prescribed by an industrial award. First 13 weeks: Weekly earnings payable as per the relevant industrial award, plus any over award or service payment paid on a regular basis including overtime, bonuses or allowances Overtime, bonuses or allowances are averaged over the 13 weeks before the injury occurred.</p> <p>14th week on award: Weekly earnings payable as per the relevant industrial award, plus any over award or service payment paid on a regular basis, but excluding overtime, bonuses and allowances. Workers whose earnings are not prescribed by an industrial award.</p> <p>First 13 weeks: Average weekly earnings payable (including overtime, bonuses or allowances) are averaged over the year before the injury occurred</p> <p>14th week: Weekly payments consist of 85% of the worker's average weekly earnings, which are averaged over the year before the injury occurred.</p> <p>Total Weekly Payments</p> <p>Total weekly payments of compensation and lump sum compensation are normally limited to the Prescribed Amount (the maximum total amount payable in weekly payments and lump sum settlements, which amounts to \$139,995.00 current until 30 June 2004).</p> <p>The Dispute Resolution Directorate, an additional amount of up to 75% of this amount indexed may be granted in weekly payments.</p>	<p>Normal weekly earnings (NEW) of the worker from employment (continuous or intermittent) in the 12 months before the day of the injury, including amounts paid immediately prior to the injury in overtime, higher duties, penalties and regular allowances. Does not include one-off periods of overtime, and further exclusions also apply as per the definition of 'allowances'.</p> <p>The total statutory maximum payable amounts to \$174,625.</p> <p>This includes lump sum and weekly compensation payments. The total lump sum and weekly payments cannot be greater than the total statutory compensation payable. Additional lump sum and gratuitous care lump sums are not included in this maximum.</p>	<p>Significant difference. Basis of weekly payments is different in each jurisdiction and different within each jurisdiction at different step-down points. Further research required to understand the impact this difference has on claim costs.</p> <p>Significant difference in total statutory payable amounts, \$174,625 in Queensland versus \$139,999.00 in Western Australia (can be increased by up to 75% of this amount as indexed at the discretion of the Dispute Resolution Directorate).</p>

Coverage			
COVERAGE	Western Australia	Queensland	Significant Differences
Medical and hospital – limits	\$41,998.50 (i.e. 30% of the prescribed amount) In certain circumstances, at the discretion of the Conciliation and Review Directorate, an additional amount of up to \$50,000.00 may be granted	- Medical and rehabilitation: no limit –all reasonable costs. (b) Private hospitalisation cost for any one incident: \$10,000.00 limit. In special circumstances, a further \$10,000.00 may be granted	Significant difference. No general caps for medical expenses for the Queensland scheme versus the prescribed limits in the Western Australia scheme. Further research required to understand the impact this difference has on claim costs.
Basis for medical and like service fees	Rates are prescribed by regulation following negotiation with the relevant body.	Medical Practitioners based on Medicare Payments Schedule, and calculated as Scheduled Fee plus 36% for all consultations and procedures. Allied Health and other services – Table of Costs, developed in consultation with service providers, outlines fees and conditions.	Significant difference. Further research required to understand the impact this difference has on claim costs.
Lump sum payments: Impairment / non – economic loss - Maximum	\$139,995.00 (less any amount paid in weekly payments for workers with a permanent injury.	Total amount payable for weekly payments and lump sum up to \$174,625 (except for payments for injuries resulting in death). After decision to accept offer of lump sum, all compensation ceases. Additional lump sum payments: A worker sustaining an injury resulting in a work-related impairment (WRI) of 50% or more is entitled to an additional lump sum of \$174,625. Also entitled to a lump sum for gratuitous care if the injury results in a WRI of 15% and moderate/total level of dependency for daily care. Amount payable up to \$216,635.	Significant difference. Queensland scheme has higher payments for high severity injuries compared to the Western Australian scheme. Further research required to understand the impact this difference has on claim costs. However Western Australia now makes provision for extra payments and assistance for severely injured workers.
Thresholds -Method of calculating (assessing permanent impairment)	No Medically assessed in accordance with AMA tables in conjunction with jurisdiction specific tables developed recently in Western Australia.	No Assessed in accordance with the AMA Guide (currently 4 th edition); psychiatric and psychological injuries assessed by a Medical Assessment Tribunal; industrial deafness injuries by an audiologist. If as a result of assessment, a worker is entitled to lump sum compensation, the amount of the lump sum compensation is calculated as per Schedule 2 of the Workers Compensation and Rehabilitation Regulation 2003, having regard to the worker 's degree of permanent impairment and the Table of Injuries	Differences now not significant as Western Australia has adopted similar tables for medical assessment of impairment, although system of panels is different..

Coverage			
COVERAGE	Western Australia	Queensland	Significant Differences
Settlement/ Redemption/ Communication	<p>A lump sum redemption of future weekly payments as a result of an injury is available, subject to the following conditions:</p> <ul style="list-style-type: none"> • the worker must have a permanent total or partial incapacity; • the worker must have been in receipt of weekly payments for not less than 6 months; • the worker and employer agree to the redemption and the amount of the lump sum; • the worker will automatically waive their common law rights, and • the Director of the Conciliation and Review Directorate is satisfied the worker is aware of the consequences of redeeming their claim. 	<p>WorkCover's liability to make weekly payments of compensation to a worker may be discharged by a redemption payment of an amount agreed between WorkCover and the worker. For such a redemption payment to be considered, WorkCover must receive a report from the doctor stating that the worker's injury is stable and stationary for the purposes of assessing permanent impairment, and:</p> <ul style="list-style-type: none"> • the worker has been receiving weekly payments of compensation for at least two years, or • the worker moves interstate permanently, or • the worker stops ordinarily residing in Australia (Entitlement to compensation ceases in this instance). 	<p>Significant difference. Note redemptions can be triggered after six months in Western Australia but cannot be considered until 24 months in Queensland. Further research required to understand the impact this difference has on claim costs.</p>
Death payments	<p>Currently \$139,995.00 (i.e. 100% of the prescribed amount). Minus: amount paid as weekly payments prior to the worker's death.</p> <p>Plus: \$35.60 per week for each dependent child until the age of 16 years (or 21 if a student).</p> <p>Funeral expenses of \$4,693.00 are also payable.</p>	<p>Maximum of \$300,000</p> <p>Minus: amount paid for under weekly payments or Table of Injuries</p> <p>Plus: lump sum payment of \$10,925 for dependent children, and weekly payments of 7% of QOTE until the age of 16 years (or 21 if student)</p> <p>Lump sum payment of \$16,480 payable to parents if the deceased is under 21 years of age with no dependants.</p>	<p>Significant difference. Further research required to understand the impact this difference has on claim costs.</p>
Common Law Rights	<p>Common law rights are available in accordance with the thresholds and requirements outlined below.</p>		<p>Significant Difference. Primary difference relates to thresholds to access common law and the maximum available damages. Further research required to understand the impact this difference has on claim costs.</p>

Coverage			
COVERAGE	Western Australia	Queensland	Significant Differences
Maximum	Unlimited for workers with an injury assessed as 30% or more. For workers with significant injury (not less than 15%, impairment but less than 30%), a maximum of \$293,990.00.	Unlimited.	Key areas of difference are the level of impairment and the procedures of claims which do not reach the thresholds.
Type of Loss	Economic and non-economic loss.	Economic and non-economic.	
Threshold for common law	Injury thresholds are assessed in accordance with AMA Guides. Common law access is available only if it is agreed or determined the worker has: <ul style="list-style-type: none"> • An impairment of not less than 15%, but less than 30%(a significant injury)and elects between statutory payments and common law, normally within 12 months from the date weekly payments commenced (statutory payments are reduced over a period of 6 months after election); • A permanent impairment of 30%or more (a 'serious injury '). Workers with a serious injury are entitled to statutory payments and access to common law. 	A worker who sustains a permanent impairment of at least 20% or more of statutory maximum compensation is entitled to lump sum compensation and access to common law. A worker who sustains a permanent impairment of less than 20% of statutory maximum compensation must make an irrevocable election between accepting the lump sum offered or access to common law.	

STATUTORY RESPONSIBILITIES			
	Western Australia	Queensland	Significant Differences
Incentives for new employers of injured workers	No direct financial subsidy scheme, although this was recommended in the <i>Report on the Implementation of the Labor Party Direction Statement in Relation to Workers' Compensation</i> , July 2001.	<p>No direct financial subsidy scheme.</p> <p>Suitable duties program</p> <p>(a) Total incapacity: When a worker returns to work on a graduated RTW program, the insurer may be responsible for wages paid for an agreed period. The employer is encouraged to pay wages according to partial incapacity as at (b).</p> <p>(b) Partial incapacity: When a worker returns to work on a graduated RTW program, employer is responsible for wages paid for the hours worked, with the insurer paying the difference.</p> <p>Exempt employer policy: Host employer of injured worker is not responsible for aggravation or exacerbation of same injury for period of six months.</p>	<p>Significant difference. Queensland scheme provides incentives to encourage host employers participating in return to work programs.</p> <p>Queensland scheme encourages employers to pay wages according to partial incapacity. This difference has the potential to have a substantial impact on the cost of claims. Further research required understanding the impact this difference has on claim costs.</p>

DISPUTE RESOLUTION			
	Western Australia	Queensland	Significant Differences
Dispute resolution process	<p>Dispute Resolution Directorate (after July 2005) which includes:</p> <p>(a) Conciliation and Teleconferencing</p> <p>(b) Arbitration</p> <p>(c) Appeal processes to Commissioner</p> <p>(d) Supreme Court Appeals</p> <p>Questions on medical issues, such as when there is conflicting opinion between the worker's doctor(s) and the employer's doctor(s), can be referred to a Medical Assessment Panel.</p> <p>The Panel also has the ability to determine the nature, extent and degree of permanency of any injury under Schedule 2.</p>	<p>Steps are:</p> <ul style="list-style-type: none"> • Internal review by WorkCover or the Self-insurer • Formal review by Q-COMP, the Workers Compensation Regulatory Authority • Appeal to industrial magistrate • Appeal to industrial court <p>Medical Issues:</p> <p>referral to Medical Assessment Tribunal (MAT)</p> <p>No appeal against a decision by MAT unless fresh medical evidence is submitted within 12 months of the MAT decision.</p>	<p>Significant difference. Note much greater use of binding medical assessment panel in Queensland. From 2005 the Western Australian system will probably make less use of panels and more use of Approved Medical Specialists.</p>

PREMIUM SETTING – INDUSTRY RATES COMPARISON TABLE			
INDUSTRY AS AT 1 JULY 2002	Western Australia	Queensland	Significant Differences
Average levy/premium rate	2.34	1.55	<p>Western Australia</p> <p>Recommended premium rates are determined annually according to independent actuarial analysis of claims and wages data provided by current and former approved insurers and self-insurers. The actuarial analysis includes:</p> <ul style="list-style-type: none"> • Calculation of relative premium rates. • Examination of the adequacy of the declared outstanding claims reserves • The analysis of insurers' expense and contingency allowances • A projection of the expected incurred cost of claims for the year • A calculation of the amount of premium expected to meet the expected cost of claims • A calculation of the implied uniform percentage variation in the relative premium rates to generate the required premium income. <p>The objectives of the actuarial assessment are to: provide broad equity across industry classes, to provide relative stability in the rating structure and to minimise the cross-subsidy of rates.</p> <p>Queensland</p> <p>The industry rates are published in an Industrial Gazette as WorkCover Industry Classification (WIC) Rates. These rates are actuarially calculated taking the industry aggregate claims performance into account, and also include a provision for outstanding claims liabilities. The average rate paid by all employers in a particular industry is used as a base rate for new employers.</p>
Highest (published) rate	12.17	12.144	
Highest (experience rate) rate	N/A	18	
Lowest (experience rate) rate	0.40	0.202	

QUALITATIVE COST ANALYSIS

Table 7 is a qualitative assessment of the cost impacts of the significant differences between the Western Australian and Queensland schemes. This table examines fourteen elements that were identified as significant differences between the respective schemes. The table segments the scheme differences into three levels of estimated cost impact (high, medium and low), and identifies which scheme is likely to have a higher cost (and the estimated magnitude of that cost).

A number of factors were identified that appear to contribute to a higher average premium rate in Western Australia. Seven of the fourteen elements which were identified as significant difference between the schemes were considered to drive higher costs in the Western Australian scheme. Of the seven factors identified, three were considered to have a high cost impact, three a moderate cost impact and one a low cost impact. The three factors considered most likely to have a high impact on the cost of claims in the Western Australian scheme versus the costs in the Queensland scheme are:

1. Weekly payments step down provisions in Western Australia significantly less than Queensland;
2. Greater use of binding medical panels in Queensland to determine medically related disputes;
3. The absence of an employer excess in the Western Australian scheme.

The three factors that were considered to drive a moderate impact of the higher cost of claims in the Western Australian scheme versus the Queensland scheme are:

1. Additional 'cost of capital' expense associated with meeting prudential requirements in accordance with the Insurance Act;
2. Cover for deemed workers in Western Australia increases the scope of coverage, possibly without increasing the premium base;
3. Return to work requirements appear substantially stronger in Queensland, likely resulting in better return to work outcomes, although the impact of employer subsidy is hard to assess.

Six of the fourteen factors identified as significant differences between the respective schemes were considered to drive higher costs in the Queensland scheme. Of the six factors identified, one was considered to have a high cost impact, one was considered to have a moderate cost impact and five were considered to have a low cost impact. The one factor that was considered to drive a relatively higher cost was related to common law rights. The one factor that was considered to drive a relatively moderately higher cost related to the inclusion of journey claims.

Table 7: Qualitative Cost Analysis of Key Scheme Variances

Significant Difference in Schemes	Western Australian Scheme (Cost Impact)	Queensland Scheme (Cost Impact)	Estimated Scheme Cost Impact
Private v Public Scheme	Higher Cost		Moderate – Western Australian Insurers required to meet prudential requirements, impacts the cost of capital
Deemed Workers	Higher Cost		Moderate – not covered in Queensland
Journey Claims		Higher Cost	Moderate – not covered in Western Australia
Weekly Payments	Higher Cost		High – payments substantially lower in Queensland
Medical Hospital Costs		Higher Cost	Low - expenses uncapped in Queensland, but significant extensions can be granted in Western Australia. Impact is considered low as it is likely to be modified by the impact of common law access for serious injuries
Common Law Rights		Higher Cost	High – approximately 50% of the total cost of claims in Queensland relate to common law versus less than 20% in Western Australia
RWT Provisions	Higher Cost		Moderate – stronger RWT provisions in Queensland. Ability to require employers to make partial payments for wages while employees on RWT programs
Dispute Resolution Process	Higher Cost		High – greater use of medical panels in Queensland for binding assessments likely to reduce dispute costs
Employer Excess		Higher cost	High – excess in Queensland transfers costs from the W.C system to the employer as a direct expense
Definition of Remuneration	Higher Cost		Moderate – difference related to component of remuneration base
Industrial Deafness		Higher Cost	Low – relatively low overall cost in both schemes
Payment cessation provisions		Higher Cost	Low – Impacts a relatively small number of claims
Death Payments		Higher Cost	Low – impacts a very low number of claims
Settlement – Redemption triggers		Higher Cost	Low – difficult to assess, likely to be higher in Queensland due to the greater restriction (24 months v 6 months) when a redemption can be offered

STATUTORY PAYMENTS

A significant difference exists between the respective schemes in relation to the structure of weekly payments. The Queensland scheme is substantially more restrictive in its weekly payments structure. Weekly payments under the Queensland scheme have a steep step-down (reduction in % of normal weekly earnings paid under workers compensation) at the 26 week period and then again at the 104 week period. Workers under the Queensland scheme can only receive a maximum of 85% of normal weekly earnings compared to Western Australia where workers effectively receive 100% for the first thirteen weeks.

As identified previously, it is expected that the step-down provisions in Queensland will have significant impact in reducing the actual costs of weekly payments, and perhaps more significantly impact the behaviour of injured workers who are losing substantial earnings when on workers compensation payments.

Weekly payments under the Queensland scheme are subject to a very restricted benefit after 104 weeks if the worker has a work related impairment (WRI) less than 15%. It is expected that this restriction would likely drive the motivation to redeem claims as soon as possible after the 104 week period.

A review of the weekly payments structure of all the schemes in Australia highlights that Queensland has the most aggressive step-down provisions. Only NSW has a lower level of initial income replacement at 80% of the employee's normal weekly wages, but that increases to 90% (this step-down is coupled with a reduction of the maximum weekly amount payable) after 26 weeks versus Queensland, where the step down is to 65% of average weekly earnings.¹⁹

A second issue that has a major bearing on the costs related to weekly payments is the definition of remuneration for the purposes of defining premium and paying weekly payments. The Queensland scheme excludes a number of allowances that are covered in the Western Australian scheme (see 'coverage' section of Comparison of Workers Compensation table).

A third major issue relating to the wage component of statutory payments is the existence of an employer excess in Queensland against no excess in Western Australia. In the Queensland scheme an employer excess exists whereby the employer pays for the first four days plus the day of the injury. There is an option in Queensland to buy out the excess at the greater rate of 8.5% of the premium or \$10.00. The effect of the employer excess in Queensland is a shifting of costs from the workers compensation scheme directly to the employer or elsewhere such as Medicare. It is likely that this results in a cost shift to employers of at least 8.5% (based on the cost of the option to buy out the excess).

The difference in weekly payment structure appears to be the most significant difference between the respective schemes and the factor most likely to be responsible for the lower costs of premiums in the Queensland scheme versus the Western Australian scheme. It is

¹⁹ *National Workers' Compensation and Safety Frameworks* (2004) Productivity Commission Inquiry Report 255.

also likely that this has an impact on common law settlements as the lower payments might place greater financial pressure on the worker to settle a claim either at common law or by redemption.

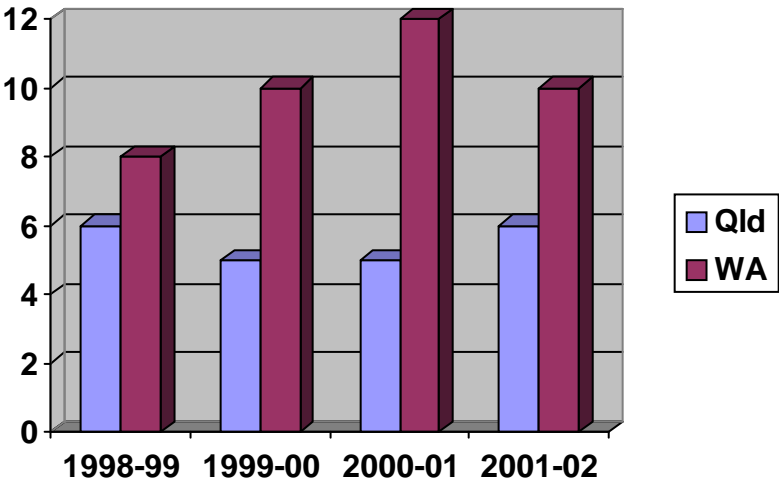
DISPUTES RESOLUTION PROCESSES

The dispute resolution mechanisms have the potential to have a major impact on the ultimate costs of claims. An outline of the respective dispute resolution processes is discussed above. It is evident that the structural processes of the respective dispute resolution mechanisms are markedly different.

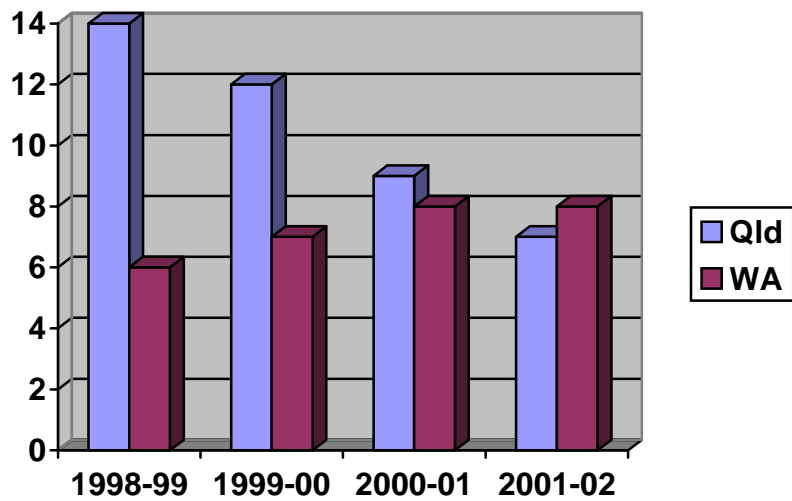
The table below highlights the difference in disputation rates between the two schemes. It is evident that Western Australia has consistently higher levels of disputes compared to the Queensland scheme over the past four years. On average, disputation rates in Western Australia are 50% - 100% higher than those in Queensland. This data does not contain any reference to the system to be introduced in Western Australia in July 2005.

An indicator of dispute levels is reflected in legal costs in the scheme. In relation to legal costs, a reverse trend is evident when examining legal costs in the respective schemes. It can be seen that Queensland has consistently higher legal costs than Western Australia although the Queensland legal costs are steadily trending down. The higher legal costs in Queensland are likely to be related to the higher frequency of common law claims. That said, the level of costs recorded by the compensation authorities is not necessarily a true reflection of overall legal costs. In Western Australia, under the system as at the time of writing, the parties bear their own costs. This means that only the legal costs of the private insurers are recorded in the data by WorkCover. The total legal costs in Western Australia may be closer to those in Queensland. It is, however, interesting to note the significant decline in costs as a proportion of common law claims in Western Australia since 1999, which corresponds with the decline in common law claims generally. The nexus between common law claims and legal costs is significant which suggests that systems which are focussed away from common law claims will reduce legal costs and possibly disputation generally.

Graph 1: Disputation rates
(Per cent, new disputes as a proportion of new claims)

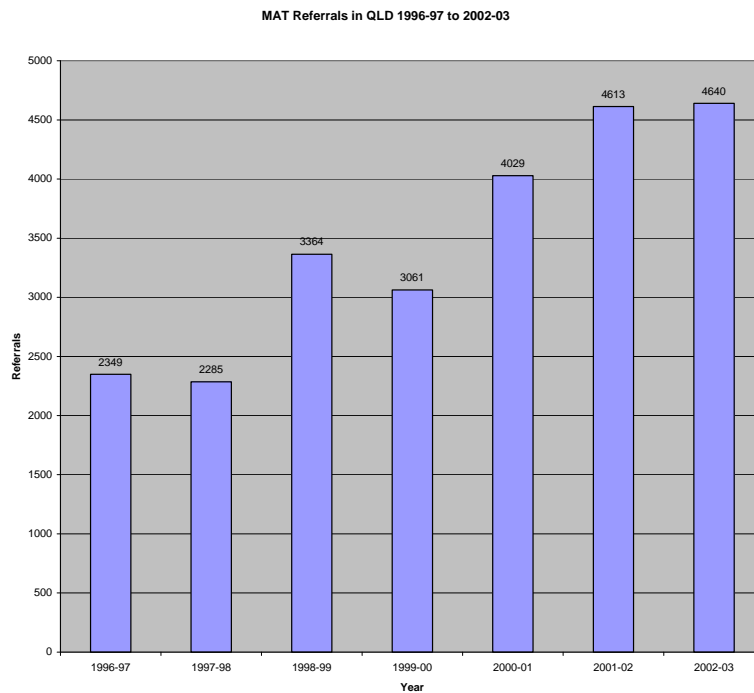


Graph 2: Legal costs as a proportion of total claims cost
(Per cent, includes common law legal costs)



A major area of dispute resolution relates to assessment of injury. At the time of writing Queensland and Western Australia have relied on markedly different methodologies to assess injury and resolve disputes related to assessment of injury. The table below highlights the number of referrals in Queensland to a medical panel for binding assessment of injury. It can be seen that the use of medical assessment panels in Queensland is much greater than in Western Australia where only 98 claims were referred in 2002/03. On average, the level of medical panel referrals in Western Australia is less than 5% of the Queensland rate (after adjusting for scheme size).

Graph 3: Medical Assessment Tribunal/Panel Referrals in Queensland

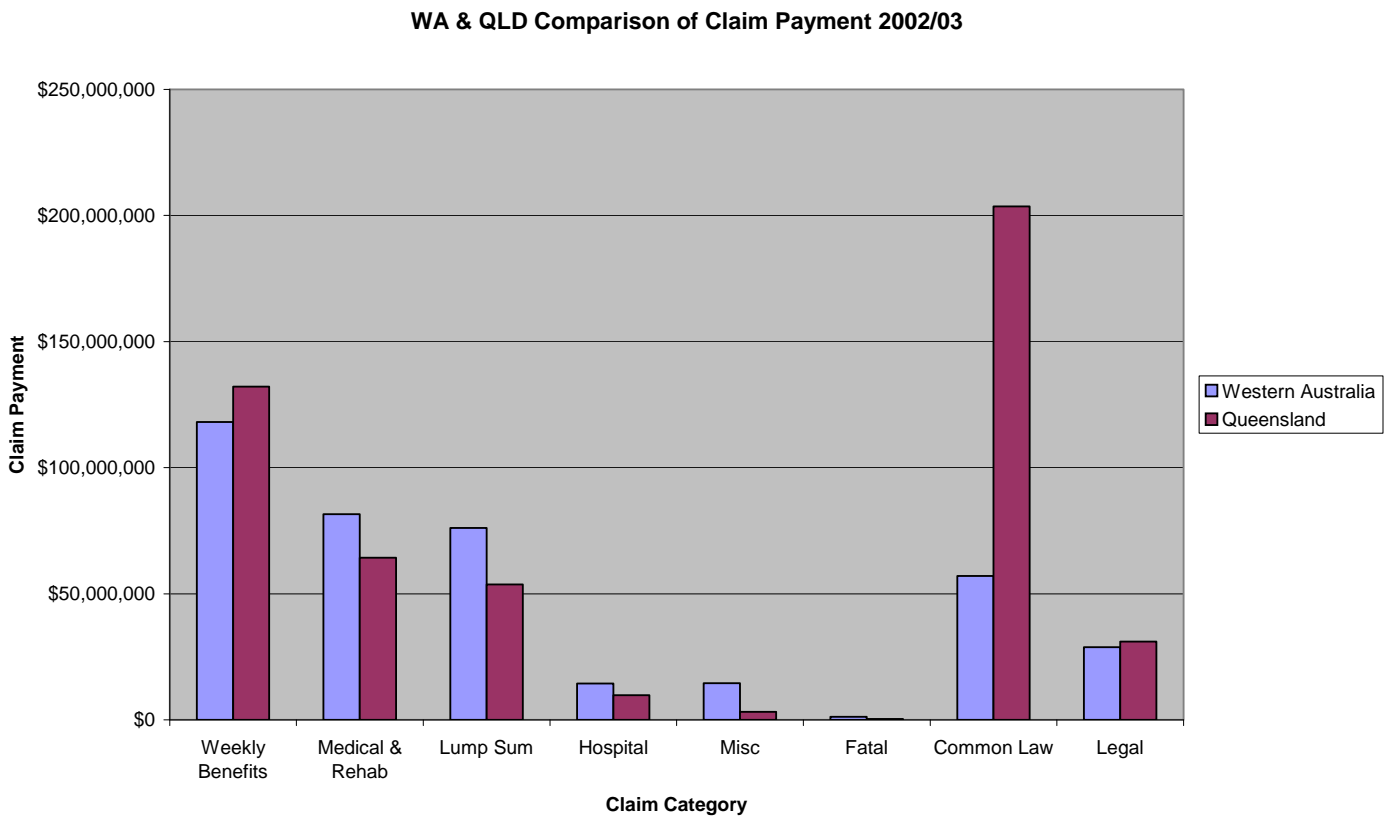


COMMON LAW ACCESS

Graph 4 highlights the comparative cost of claim payments over a number of categories. It can be seen that the greatest variance in claim costs relates to the common law category. The differences in the access to common law between the respective schemes are discussed above. While it is clear that the frequency of common law claims is much greater in Queensland (3.6% of total claims versus 1.3% of total claims in Western Australia for the 2002/03 year), the average cost of a common law claim in Queensland is significantly less (\$99,270 versus \$264,085 in Western Australia for the 2002/03 year).

It appears that the increased frequency of common law claims in Queensland is directly related to the difference in access mechanisms to common law as detailed above, which suggests that access to common law in Queensland is simpler and that the threshold is lower. It is unclear why there is such a large difference in the average common law claim costs between the two states; it seems unlikely that this relates solely to the judicial environment rather than the framework of the workers compensation scheme. Further research is required to explain this trend. By way of conjecture, the data suggests that although access to common law is theoretically easier in Queensland, there is greater pressure to settle claims due to the significantly lower weekly payments and step-down pressures. The overall impact of the difference in access to common law appears to be a major driver in the costs of claims between Western Australia and Queensland. It is a factor that appears to be the most significant in terms of increased costs in the Queensland scheme. This is supported by examining the overall costs of common law in Queensland which represents approximately 49% of the total costs of claims while in Western Australia, common law claims now account for less than 20% of the total costs of claims. To some extent this is explained again by the effectiveness of the 1999 amendments which had a marked effect on limiting common law claims in Western Australia.

Graph 4: Western Australia & Queensland Comparison of Claim Payments²⁰



CONCLUSIONS

The above survey demonstrates that it is not possible to compare Australian workers compensation systems in any exact scientific or quantitative way.²¹ Any comparison is based to a large extent on qualitative assumptions. It has been shown above that there are probably some areas within each system that will have impacts on costs. It is not possible to assert that one system is superior based upon one or two characteristics of that system. The statements quoted in the introduction from parliamentary debates focus heavily on two factors alleged to indicate the superiority of the Queensland scheme. First is the lower premium rate. In relation to this aspect it is worth noting that employers pay an excess in relation to all claims, so that it is artificial to assume that the only cost of workers compensation is the premium cost. The cost of any excess should be added to the premium. Likewise a low premium may also be an indicator that lower worker payments permit the insurer to lower its premium. In other words, if the expectation is that premiums of 1.5% will cover claims costs, this suggests that either the claims costs are low because of low scheme payments or low claim rates or savings made in other areas.

²⁰ Western Australia Lump Sum category includes Redemptions and Second schedule settlements. Western Australia Medical and Rehabilitation category includes \$14.87M for Vocational Rehabilitation, \$42.59M in Medical Practitioners and Specialists and \$24.11M for all Other Treatment. Queensland Fatal category only includes funeral expenses (\$0.3M). Queensland Legal category includes \$29.5M for legal expense related to Common Law claims (Western Australia legal expenses not broken out). It is assumed that claims data is at the same point in time. Source: *Queensland Workers' Compensation Scheme 2002/03 Statistics Report* and *WorkCover Western Australia Annual Report 2002/03*.

²¹ Although it might be possible to conceive of a means by which this might be done.

The data does not support the conclusion that the scheme costs are covered by the premiums because the scheme has been in deficit for the last two years.²² The assertion that the Queensland system pays workers more than other states is not consistent with the data on average common law damages awards, or the preliminary comparison of payments. There is some support for the view that the low premium is maintained by a combination of the employer excess and lower worker payments, especially through the significant step-down of weekly payments. This seems a credible perspective. There is also evidence from other jurisdictions that the low step-downs drive workers towards lump sum cash settlements in order to secure funds to cover debts created by the wages shortfall.²³ The retention of the low premium rate in Queensland despite insurer deficits suggests that the system will require adjustment. If the level of premium is to be maintained it is foreseeable that worker payments will be reviewed.²⁴

This leads to the second issue of common law access. As noted in the introduction it is asserted by the Hon Jim Scott that common law access has not been reduced as much as that in Western Australia. This is correct insofar as it relates to the level of threshold set under the Queensland scheme which is based on 20% impairment. This allows those with more than 20% impairment to have unrestricted access to common law. Those below 20% must make an election whether to accept a lump sum payment based on the scheduled statutory impairment rating or proceed with a common law claim. It is important to note that many workers at this point would have been subject to the severe step-down regime and would probably be under some financial pressure to accept the statutory lump sum payment. In other words, there is a compelling argument that the apparently greater access in Queensland is illusory given the low average pay-outs. In fact the low average pay-out for common law suggests that in fact many claims are settled by payment of the statutory lump sum in the guise of a common law payment. At a minimum, the step-down regime cannot be ignored as part of the common law access process.²⁵

Dispute resolution processes are particularly hard to compare. The high disputation rate in Western Australia is of concern, as this may be an indicator of complexity in legislation, poor insurer administrative processes or poor Directorate processes. On the other hand the low Queensland rates of disputation coupled with the high use of medical panels suggests an over reliance on medical panels as determiners of key issues. It appears that the Queensland legislation allows medical panels to make findings of fact in some circumstances, particularly as to the question of incapacity and perhaps even in relation to the threshold question of whether an injury has been sustained.²⁶ The breadth of the

²² Queensland has in fact reduced its premium to 1.43% at the time of writing.

²³ See the *Report of the Review of Workers Compensation in Tasmania 2004* Department of Infrastructure Energy and Resources Tasmania 28-34 (the Rutherford Report) – which noted that step-downs in Tasmania which were similar to the Queensland model created unanticipated hardship for workers and did not create incentives to return to work.

²⁴ This has occurred, see Second Reading Speech in relation to the *Workers Compensation and Rehabilitation and other Acts Amendment Bill 2004* (Qld) 19 October 2004 2932, which suggests reductions in some common law claims and changes to step-downs and other payments. See <http://www.workcover.qld.gov.au/AboutWorkCover/News/General/Februa702erNews.html> for a summary of the changes.

²⁵ In Western Australia the amended provisions will allow a worker to continue to receive payments for up to six months from the time of election, albeit on a step-down basis. There is no doubt however that the provisions in place in Western Australia at the time of writing are not as favourable as those in Queensland, are excessively complex and have led to an almost complete embargo on common law claims for workers with 16% disability of the body as a whole which is the present criteria.

²⁶ See for example sections 501-3 of the *Workers Compensation and Rehabilitation Act 2003* (Qld).

medical panel jurisdiction exceeds that of the equivalent Western Australian medical assessment panels. In addition the Queensland structure is heavily administrative in that the system requires in the first instance a decision by the compensation authority, with provision for reconsideration, review and ultimately appeal to an Industrial Magistrate. The structure does not formally allow for the alternative dispute structures currently available in Western Australia by way of conciliation and review before an officer independent of the compensation authority. The post-July 2005 Western Australian dispute structure retains some of the features of conciliation and review, but combines some of these roles in an innovative manner, in much the same way as the current New South Wales system. There are signs that the New South Wales dispute process is currently working reasonably well, with some need for fine tuning in relation to directions hearings and technical disputes.

Overall the conclusion is that some of the features of the Queensland system are attractive, for example the simplified common law structure and the strong rehabilitation provisions. That said, the proposed common law procedures in Western Australia have yet to be tested and the formal structures for injury management are being developed. The lower premium costs to employers in Queensland are clearly not an indicator that the Queensland system is superior. In complex systems such as workers compensation it is interesting that the premium rate seems to have been adopted as the benchmark of success when what is really required is an integrated view looking broadly at the overall payments to workers, the ease and speed with which disputes are resolved, the support for workers who are incapacitated for lengthy periods, the costs to insurers and employers and the stability of the scheme over a number of years. As the post-2005 provisions become operative in Western Australia it will be worth revisiting these issues.

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