

Chapter
19

**Workers' Compensation
& Rehabilitation**

History of Workers' Compensation in Queensland

Queensland's involvement with workers' compensation dates back to the *Employers' Liability Act of 1886*. In 1905 the *Workers' Compensation Act* adopted the no fault principle and general coverage of the British model. Up until 1916 Queensland employers were expected, but not compelled, to seek accident insurance for their workers. Private insurers provided such insurance with little government involvement.

The *Queensland Workers' Compensation Act of 1916* repealed the former legislation and became the foundation for today's legislation, establishing mandatory insurance requirements for employers and extended coverage from manual workers to practically all workers in the state.

In 1986, the *Workers' Compensation Amendment Act* was given royal assent. One of the major amendments was the exclusion from the definition of "worker" of company directors (although those employed under a contract of service could elect to be insured), partners and trustees (unless specifically insured). It also clarified as to when contractors and sub-contractors were deemed to be workers.

The *Workers' Compensation Act Amendment Act 1988* made changes to the *Workers' Compensation Act 1986* in several areas, but most importantly in payment of certain permanent partial disabilities and in benefits associated with fatal claims. Medical Boards were to determine whether incapacity was partial or total.

The Queensland workers' compensation system itself remained relatively stable during this time. However, following extensive consultation with stakeholders, the *Workers' Compensation Act 1990* was passed, repealing the legislation of 1916-1988. The structure of the scheme was retained with major increases to benefits and services to injured workers were introduced based on outcomes of the consultation process.

In 1996 there was an inquiry into Workers' Compensation and Related Matters in Queensland conducted by Commissioner Jim Kennedy. The Kennedy Report made a total of 79 recommendations in relation to the provision of workers' compensation in Queensland. These recommendations formed the basis of the *WorkCover Queensland Act 1996*. Key features of the Act included experience based premium rating to replace the merit bonus/penalty system and changes in coverage in certain areas eg. the definition of "worker" and "injury", journey claims and industrial deafness.

The main structural change introduced by the 1996 Act was the replacement of the Workers' Compensation Board of Queensland as a division of a government department with a new, independent statutory body, WorkCover Queensland.

In 1997, the option for employers to self-insure was introduced, subject to the satisfaction of certain prudential and other criteria.

In March 1999, the Labor Government announced its future policy directions for workers' compensation in a paper, "Restoring the Balance". These policies were incorporated into the *WorkCover Queensland Amendment Act 1999*. Key features included changes to the definition of injury and worker and changes to self-insurance criteria.

Under the *WorkCover Queensland Act 1996*, WorkCover Queensland had two clearly identified roles: the first, to provide accident insurance as a commercial provider; and the second, to enforce the Act as a regulator. On 24 May 2000 the WorkCover Regulatory Functions Division was relocated to separate premises and launched under the new name of Q-COMP.

In 2003, as a result of the National Competition Policy review of the *WorkCover Queensland Act 1996* there was formal separation of WorkCover's insurance and regulatory functions. The review identified that the combined roles of WorkCover in service delivery and regulation of the scheme through its Q-COMP Division constituted a conflict with competition principles and should be separated. The government accepted these recommendations and the *Workers' Compensation and Rehabilitation Act 2003* was introduced on 1 July 2003.

What's New?

Workers' Compensation and Rehabilitation Act 2003 ('the Act') and explanatory notes.

Key features of new legislation include:

- the repeal of the *WorkCover Queensland Act 1996* and provision for new legislation to provide for the separate delivery and regulation of the workers' compensation scheme;
- maintaining WorkCover as a commercial entity and candidate Government Owned Corporation in the business of workplace accident insurance, including premium setting, with a smaller, seven member board divested of regulatory functions;
- establishment of WorkCover's regulatory arm, Q-COMP, as a separate statutory authority with a board to regulate Queensland's workers' compensation scheme;
- enabling Workers' Compensation Advisory Committees to advise the Minister on scheme design and other policy issues; and
- centralising policy and legislative development functions within the Department of Industrial Relations (DIR) – Workers' Compensation Policy Unit.

This Act was developed following a full review of the policy, regulation and delivery mechanisms of the workers' compensation scheme. This review incorporated a Public Benefit Test as part of an assessment under the terms of the National Competition Policy. For further information on the National Competition Policy Legislative Review of the *WorkCover Queensland Act 1996* [click here](#).

While the Act repeals the *WorkCover Queensland Act 1996*, the essential characteristics of the Queensland's workers' compensation scheme have been retained. WorkCover will continue to deliver insurance underwriting and service delivery functions through its metropolitan and regional office network.

Change to definition of 'Worker'

- The definition of worker has been broadened to provide greater protection to workers across all industries in Queensland.
- A results test has been introduced to determine who is a worker and who is an employer. Under this three-part test, a person is considered to be a "worker" unless-
(1) the person is paid to achieve a specified result or outcome; **and**
(2) has to supply the plant and equipment or tools of trade needed to perform the work;
and
(3) would be liable for the cost of rectifying any defect in the work performed.
- The importance of the change is that it requires the satisfaction of the three tests irrespective of whether or not a contract of service exists or can on the evidence be found.
- For definition see section 11 and Schedule 2 (Parts 1 and 2) of the *Workers' Compensation and Rehabilitation Act 2003*.

What is experience-based rating?

Experience-based rating is an internationally-used system for calculating workers' compensation premiums. It links your premium with your claims. The more claims you have, the more expensive your premium. But more importantly, if you have no claims or claims where there are minimal costs, there is a good chance your premium will reduce. Of course, in this insurance, we are concerned with people and about getting injured workers back to work as safely and quickly as possible. Good injury prevention is the best way to control your premium costs.

Experience-based rating is a fair way to calculate your premium because it gives you a chance to reduce your premium, even if other people in industry have high claims.

I am a current policyholder, how is my premium calculated?

We multiply your wages paid in your business by your own premium rate to calculate your premium.

On or prior to 31 August of each year you must declare your actual gross wages for the preceding financial year and an estimate of the gross wages you expect to pay the next financial year (detailed on the Declaration of Wages form).

Your own premium rate is worked out by combining your own claims experience (calculated using the claims experience factor and includes a sizing factor) with a base industry classification, called the WorkCover Industry Classification.

Once we have this information, we calculate your assessed and provisional premiums. Then, we add stamp duty and the Goods and Services Tax (you usually get all the GST back). We also have to consider any other charges that may apply, like a late payment charge from the previous year.

I am a new policyholder, how is my premium calculated?

We will calculate your premium in a similar way to current policyholders, except your premium rate will be a WorkCover industry premium rate based on the WorkCover Industry Classification that most accurately describes your business activity.

This premium rate will apply until you have gained at least 18 months claims experience. After this, you will have your own premium rate worked out under experience-based rating.

I am buying an existing business, how will that impact on my premium?

When a new employer acquires an existing business, and the employer has previously been associated with that business, the premium rate for the new policy is determined for the first eighteen months by the premium rate on the previous owner's policy.

Can I appeal my premium?

If you disagree with the way we calculate your premium, you have a right of appeal through Q-COMP's Review Unit. You have to complete an Application for Review within 3 months of receiving WorkCover's premium decision.

If you are still dissatisfied with the outcome of Q-COMP's review, you have further rights of appeal through the Industrial Magistrate and the Industrial Court.

Please note: You still have to pay your premium by the due date irrespective of the review process. If your appeal to Q-COMP is upheld and you are entitled to a refund, this will be sent to you. Q-COMP has the details about this appeal process.

Complete list of WorkCover Industry Classifications

The WorkCover Industry Classifications are revised each year in April or May. You will have an individual premium rate and these classifications are base rates to be used as a guide.