

# **Comparison of workers' compensation arrangements in Australia and New Zealand**

**July 2013**

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# Foreword

The Comparison of Workers' Compensation Arrangements in Australia and New Zealand provides information on the operation of workers' compensation schemes in each of the jurisdictions in Australia and New Zealand.

This is the second edition of the Comparison report after it was substantially revised and reformatted in 2012. The main changes are:

- Chapter 1 only includes recent developments. Information on the history and evolution of workers' compensation schemes has been moved to Appendix 1
- Chapter 2 — Schemes at a Glance has been expanded to include information of interest to employers, workers and their representatives
- the sections on administrative arrangements and scheme funding arrangements have been combined into a single chapter and moved to the back of the report in Chapter 7
- the comparative table of deemed diseases has been moved to Appendix 2
- Chapter 5 — Return to work has been substantially revised to provide briefer, more comparable data, and
- the section on Self-insurer arrangements has been separated from the scheme funding arrangements and is presented in Chapter 6.

In this edition, Table 2.13 was expanded to include information on the effect of taking leave while on compensation. A new table was created to include information on coverage for volunteers (Table 3.3).

The Comparison provides background to the evolution of workers' compensation arrangements in Australia and New Zealand and discusses the way each scheme deals with key aspects such as the size and nature of the schemes, coverage, benefits, return to work provisions, self-insurance, common law, dispute resolution and cross-border arrangements.

The majority of tables contained in this report provide a snapshot of workers' compensation arrangements as at 30 September 2012. However, it must be noted that the information for the ACT was current at 30 June 2012. Information taken from the 14th edition of the Comparative Performance Monitoring report covers the 2010–11 financial year and some jurisdictions have reported recent developments to the end of December 2012. As each jurisdiction may vary its arrangements from time to time and there may be some exceptions to the arrangements described in this edition, readers wanting more up to date information should check with the relevant authority.

On behalf of the Heads of Workers' Compensation Authorities (HWCA), the Victorian WorkCover Authority produced this publication from 1993 to 2005. The Australian Safety and Compensation Council took over responsibility for the report in 2006 and produced it in 2006 and 2007. Safe Work Australia has been producing the report since 2008. The work of the Victorian WorkCover Authority and the Australian Safety and Compensation Council is acknowledged. Safe Work Australia thanks the representatives from each jurisdiction for the valuable assistance they have provided in producing this edition of the Comparison of Workers' Compensation Arrangements in Australia and New Zealand.



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# Chapter 1: Recent developments in workers' compensation schemes in Australia and New Zealand

There are 11 main workers' compensation systems in Australia. Each of the eight Australian states and territories has developed their own workers' compensation schemes and there are also three Commonwealth schemes: the first is for Australian Government employees, Australian Defence Force personnel with service before 1 July 2004 and the employees of licensed self insurers under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act); the second is for certain seafarers under the *Seafarers Rehabilitation and Compensation Act 1992*; and the third is for Australian Defence Force personnel with service on or after 1 July 2004 under the *Military Rehabilitation and Compensation Act 2004* (MRCA).

This chapter will focus on recent developments that came into effect between July 2010 and September 2011 or which will come into effect after that time. The historical section on the evolution of the workers' compensation schemes can be found in Appendix 1.

## New South Wales

In June 2012 the New South Wales Government introduced changes to the NSW workers' compensation system. The *Workers Compensation Legislation Amendment Act 2012* was assented on 27 June 2012 and amended the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*. The changes affect all new and existing workers' compensation claims, except for claims from:

- police officers, paramedics and fire fighters
- workers injured while working in or around a coal mine
- bush fire fighter and emergency service volunteers (Rural Fire Service, Surf Life Savers, SES volunteers), and
- people with a dust disease claim under the *Workers' Compensation (Dust Diseases) Act 1942*.

Claims by these exempt workers will continue to be managed and administered as though the June 2012 changes never occurred.

The changes have been scheduled to come into effect in stages.

### Changes with effect on and from 19 June 2012

- For permanent impairment lump sum compensation claims made on or after 19 June 2012:
  - Payments for pain and suffering under s67 of the *Workers Compensation Act 1987* are no longer available.
  - A threshold of more than 10 percent permanent impairment for physical injury (including hearing loss) must be reached to access a permanent impairment lump sum. The threshold for psychological injury lump sum payments remains at 15 percent permanent impairment.

- Only one claim can be made for permanent impairment compensation.
- Journey claims for an injury received on or after 19 June 2012 can only be made if there is a real and substantial connection between the employment and the incident out of which the injury arose.
- No compensation is payable for heart attack and stroke injuries received on and after 19 July 2012 unless the nature of the employment concerned gave rise to a significantly greater risk of the worker suffering the injury than had the worker not been employed in employment of that nature.
- Definition of 'injury' amended so that a 'disease injury' is a disease that is contracted in the course of employment only if the employment was the main contributing factor. 'Disease injury' also encompasses the aggravation, acceleration, exacerbation or deterioration in the course of employment of any disease provided the employment was the main contributing factor. This applies to all injuries received on and from 19 June 2012.
- The amendments prevent a claim for damages for nervous shock where the nervous shock is not a work injury and prevent a claim for damages by relatives of an injured or deceased worker because the relative's injuries are not work injuries. The amendments do not apply where court proceedings for nervous shock claims commenced before 19 June 2012.

### **Seriously injured workers**

The following reforms for seriously injured workers (injured workers with a permanent impairment of more than 30 percent) came into effect on 17 September 2012:

- The minimum amount used to calculate the weekly payment was increased to \$736.72 gross.
- There is no time cap on weekly payments except for the Commonwealth retirement age.
- There is no time limit on payments for reasonably necessary medical and related expenses.
- Seriously injured workers will not have to undergo a work capacity assessment every two years — unless the worker requests one to explore return to work options.

### **Weekly payments**

The changes to weekly benefits will come into effect on:

- 1 October 2012 for new claims, and
- 1 January 2013 for existing claims.

The changes to weekly payments include:

- A simplified method for calculating workers' entitlements based on the worker's pre-injury average weekly earnings — incorporating overtime and shift allowance in the initial 52 weeks of weekly payments.
- Up to 95 percent of pre-injury average weekly earnings for the first 13 weeks of a claim.
- For weeks 14 to 130, weekly payments will be 80 percent of pre-injury average weekly earnings. If a worker returns to work for at least 15 hours per week, weekly payments will be made up to 95 percent of pre-injury average weekly earnings.
- 130 week limit — for all workers except where workers meet specified requirements:
  - workers who are fit to do some work and are not performing at least 15 hours of paid work per week and earning at least \$155 per week by the 130<sup>th</sup> week of incapacity payment will not be entitled to payments after the 130<sup>th</sup> week, and

- workers who do achieve an actual return to work of more than 15 hours and earn at least \$155 per week, or have no capacity for work, or have an impairment of more than 30 percent of the whole person are not subject to this time limit.
- 5 year limit — workers with a WPI of 20 percent or less may only receive up to 260 weeks (five years) worth of weekly payments. Workers with permanent impairment of more than 20 percent are not subject to this time limit.
- Weekly payments and retirement:
  - if an injury occurs before retiring age, a worker may be entitled to weekly payments until reaching retiring age, and
  - if an injury occurs after reaching retiring age, a worker may be entitled to weekly payments in the period up to 12 months after the first date of incapacity.

### **Work capacity assessments**

- Work capacity assessments will be undertaken by the insurer. The assessment involves a review of the injured worker's medical, functional and vocational status and helps to inform decisions about the injured worker's capacity to return to work in suitable employment and entitlement to weekly benefits.
- A work capacity assessment can occur at any point in the life of the claim. A decision must be made on the injured worker's work capacity by 130 weeks and then will be reviewed at least every two years thereafter.

### **WorkCover Independent Review Officer**

The June 2012 reforms also enabled the establishment of a WorkCover Independent Review Officer (WIRO). From 1 October 2012 the WIRO will be responsible for:

- investigating complaints made by workers about insurers and making recommendations for action to be taken by the insurer or the worker
- reviewing work capacity decisions by insurers
- encouraging high quality complaint resolution by insurers and employers
- reporting annually to the Minister and the Parliament on their responsibilities, and
- administering the Independent Legal Assistance and Review Service. This service will facilitate access to free independent legal advice to injured workers, in circumstances where there is a disagreement with insurers regarding entitlements.

### **Medical and related expenses**

The changes to payments for medical and related treatment will come into effect on:

- 1 October 2012 for new claims, and
- 1 January 2013 for existing claims.

Under the changes, payments for medical and related treatment will end at whichever occurs last:

- where no weekly payments for compensation are payable, 12 months after the claim for compensation is made, or
- 12 months after the last payment of weekly benefits.

## Victoria

New return to work rights and obligations commenced from 1 July 2010 that replaced prescriptive return to work requirements with a performance based regulatory framework. These changes were part of extensive amendments to the *Accident Compensation Act 1985* assented to in March and October 2010, with the majority of changes commencing on 5 April 2010.

Further information on return to work can be found at [WorkSafe Victoria](#).

On 7 April 2011 WorkSafe Victoria announced its new panel of WorkSafe Agents to manage premiums and claims from 1 July 2011 following a comprehensive expression of interest and tender process which began in July 2010.

As part of the tender process, WorkSafe Victoria outlined at a high level its intent to continue to make enhancements to the claims model to further improve services to Victorian employers and injured workers while ensuring scheme viability. The enhanced claims model extends the specialist model, incorporating two new specialist roles and modifications to segmentation:

- eligibility officer, and
- return to work specialist.

In addition, WorkSafe Victoria will take an active role in training and capability development and lead industry-wide training in critical areas of return to work and entitlement.

On 1 July 2011, the new ANZSIC 2006 based Workcover Industry Classification (WIC) system commenced.

## Queensland

On 7 June 2012, the Queensland Parliament passed the following motion:

1. That the Finance and Administration Committee inquire into and report on the operation of Queensland's workers' compensation scheme, in particular:
  - (i) the performance of the scheme in meeting its objectives under s5 of the Act
  - (ii) how the Queensland workers' compensation scheme compares to the scheme arrangements in other Australian jurisdictions
  - (iii) WorkCover's current and future financial position and its impact on the Queensland economy, the State's competitiveness and employment growth
  - (iv) whether the reforms implemented in 2010 have addressed the growth in common law claims and claims cost that was evidenced in the scheme from 2007–08, and
  - (v) whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment.
2. In conducting the inquiry, the committee should also consider and report on implementation of the recommendations of the Structural Review of Institutional and Working Arrangements in Queensland's workers' compensation scheme.
3. Further, that the committee take public submissions and consult with key industry groups, professionals, and relevant experts.
4. The committee is to report to the Legislative Assembly by 28 February 2013. The Committee has been granted an extension until 23 May 2013 to table its report.

## Western Australia

### Legislative Review — First stage implementation

In 2011–12 WorkCover WA implemented the *Workers' Compensation and Injury Management Amendment Act 2011*. The changes included:

- the establishment of a new Conciliation and Arbitration Service (replacing the Dispute Resolution Directorate)
- the removal of all aged-based limits on workers' compensation entitlements
- the extension of the safety net arrangement for workers awarded common law damages against uninsured employers, and
- various amendments of an administrative nature.

### Legislative Review — Second stage

WorkCover WA commenced the second stage of the legislative review in 2012. This stage involved a complete redraft of the *Workers' Compensation and Injury Management Act 1981* with the objectives of introducing contemporary language and drafting conventions and a logical and coherent structure while preserving the current intent of the legislation.

The review also addressed:

- outstanding recommendations from the 2009 legislative review
- identified technical and process issues with the current legislation, and
- the need to enhance readability and consistency and introduce contemporary language and drafting conventions.

The review is expected to be completed in late 2013.

### Workers' compensation and injury management amendment (Jockeys) Act 2012

The State Parliament passed legislation to align the rate of weekly compensation paid to licensed jockeys with their pre-injury average weekly earnings on the same basis as other non-award workers under the *Workers' Compensation and Injury Management Act 1981*. The legislation also clarifies the scope of the workers' compensation insurance obligation between Racing and Wagering Western Australia and licensed trainers regarding work done by jockeys for trainers at unlicensed facilities. The legislative changes came into effect on 14 December 2012.

### Review of WA Acts of Terrorism legislation

WorkCover WA commenced a review of the *Workers' Compensation and Injury Management Acts of Terrorism Act 2001* (the Terrorism Act).

The Terrorism Act was enacted as an interim arrangement pending the development of a national insurance scheme covering terrorist events. As it was not intended to operate indefinitely the Terrorism Act contains a sunset clause ('final day') which has been extended several times, most recently to 31 December 2014.

The Commonwealth Government has since developed a national scheme, however it excludes workers' compensation liabilities, which remain the responsibility of the states and territories.

The objective of this review is to consider a more permanent legislative arrangement for workers' compensation liabilities arising out of acts of terrorism and to address a number of identified anomalies (including reviewing the cap on total collective liability for insurers and self-insurers, which is currently set at \$25 million with no ability for indexation. Ambiguities regarding the claims process will also be addressed).

## South Australia

### Claims management and claims legal services

WorkCover SA announced its intention to commence a procurement process for the provision of future claims management services and claims legal services for the WorkCover Scheme in May 2011. Current contracts for claims management services and claims legal services expire in December 2012.

On 22 August 2012 WorkCover announced that Employers Mutual and Gallagher Bassett had both been appointed to provide claims management services for the WorkCover Scheme from 1 January 2013. The new claims agent contracts will provide greater financial incentives for the claims agents to improve return to work outcomes across all claims categories and therefore the longer term performance of the Scheme.

At the commencement of the claims agent contracts in January 2013 both agents will receive a 50 percent market share. After 2013 employers will have the opportunity to change claims agent each year if they wish. The contracts are for a period of four and a half years from 1 January 2013 to 30 June 2017, with the option of two extension periods of up to five years each.

### Employer Payments

The *Workers' Rehabilitation and Compensation (Employer Payments) Amendment Act 2011* (the Employer Payments Act) commenced on 1 July 2012. The Employer Payments Act amended the *Workers' Rehabilitation and Compensation Act 1986* and made consequential amendments to the *Occupational Health, Safety and Welfare Act 1986*, the *Stamp Duties Act 1923* and the *WorkCover Corporation Act 1994*.

The Employer Payments Act enables a new approach to employer payments in the South Australian workers' compensation scheme and provides a financial incentive for employers to achieve the best possible work health and safety practices leading to fewer workplaces injuries. Where workplace injuries do occur, the system will provide a financial incentive to employers to support injured workers to stay at work wherever possible or to achieve an early and safe return to work.

The Experience Rating System for medium and large employers compares an employer's own claims experience to that of their industry. This is achieved by comparing an employer's claims cost rate with their industry's claims cost rate and making adjustments to recognise the significant size differences among businesses.

There is an optional Retro Paid Loss arrangement for large employers registered with the Scheme and no change to the way small employers pay their premium. There are minimal changes to private and Crown self insured arrangements.



## **Definition of worker**

Section 103A of the *Workers' Rehabilitation and Compensation Act 1986* establishes the Crown as the presumptive employer of volunteers as prescribed by the regulations. Under regulation 17 of the *Workers' Rehabilitation and Compensation Regulations 2010* Country Fire Service volunteers have been deemed as workers for many years. On 14 June 2012 this regulation was extended to apply to Marine Rescue and State Emergency Service volunteers, taking effect from 14 October 2012.

## **Revised training for Rehabilitation and Return to Work Coordinators**

In December 2008 WorkCover published the first set of *Rehabilitation and return to work coordinator training and operational guidelines* (RRTWC guidelines) in the South Australian Government Gazette, to serve as 'training or operational guidelines' referred to under s28D(5)(b) of the *Workers' Rehabilitation and Compensation Act 1986*. The RRTWC guidelines, among other things, set out a standard of training that employers must ensure that their coordinator successfully completes.

In 2012 WorkCover undertook a review of the training requirements of coordinators with the aim of identifying improvements. The amended RRTWC guidelines were published on 28 June 2012 and became effective on 1 July 2012. The guidelines were updated to incorporate feedback received during consultation and more broadly amended to reflect current practice and improve clarity. Changes to the guidelines include:

- a new training system to be delivered by Registered Training Organisations (RTO). An RTO is an organisation registered in accordance with the national Australian Qualification Training Framework's standards
- removal of the requirement that coordinators participate in ongoing development activities, and
- recognition of coordinator training programs approved by other Australian workers compensation regulatory authorities for the purpose of registration as a coordinator in South Australia.

## **Tasmania**

### **Workers' Rehabilitation and Compensation Amendment Act 2009**

The *Workers' Rehabilitation and Compensation Amendment Act 2009* was passed by Parliament in late 2009 and commenced on 1 July 2010. The amendments had four main purposes:

1. to implement the Government's response to the Clayton report
2. to establish the legal framework for the WorkCover Return to Work and Injury Management Model
3. to amend the timing and level of weekly payment step-downs, and
4. to reduce the common law threshold from 30 percent WPI to 20 percent.

The amendments:

- introduced a statement of scheme goals

- encourage early reporting by holding the employer liable for claims expenses until the claim is reported
- provide for the payment of counselling services for families of deceased workers
- provide for the payment of medical and other expenses for up to 12 months after a worker ceases to be entitled to weekly compensation (with the possibility of extension on application to the Tribunal)
- increase the maximum lump sum payable to a dependant on the death of a worker to 415 units. At September 2011, this was \$289 192.75
- increase weekly payments payable to a dependant child of a deceased worker from 10 percent basic salary to 15 percent basic salary
- increase the maximum lump sum payable for permanent impairment to 415 units. At September 2011, this was \$289 192.75
- provide for the extension of weekly payments from nine years to 12 years for workers with a WPI between 15 percent and 19 percent; to 20 years for workers with a WPI of between 20 percent and 29 percent and until the age of retirement for workers with a WPI of 30 percent or more
- amend the first step-down to 90 percent of normal weekly earnings (NWE) rather than 85 percent of NWE
- delay the operation of the first step-down, so that it comes into effect at 26 weeks of incapacity rather than 13 weeks
- provide that the step-downs are not to apply where a worker has returned to work for at least 50 percent of his or her pre-injury hours or duties
- provide that the step-downs are to be discounted in circumstances where an employer refuses or is unable to provide suitable alternative duties
- reduce the threshold for access to common law damages from 30 percent WPI to 20 percent WPI, and
- repeal s138AB requiring a worker to make an election to pursue common law damages.

The amendments also included a range of measures that support the WorkCover Return to Work and Injury Management Model including:

- requirements for return to work and injury management plans
- obligations on employers to encourage early reporting of injuries and claims
- providing an entitlement to the payment of limited medical costs before the claim is accepted, and
- introduction of an injury management coordinator to oversee the injury management process.

### **Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011**

The *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* commenced on 31 October 2011. The Act establishes a scheme for the payment of compensation to workers who develop or developed asbestos-related diseases (ARD) through exposure to asbestos during the course of their employment. A person may still come within the scope of the Act notwithstanding that he or she may have retired some time ago. Compensation may also be available to certain family members of a worker that has died from an ARD.

Compensation is not available where a worker has already received compensation for the same ARD at common law or under legislation in another jurisdiction or under the *Tasmanian Workers' Rehabilitation and Compensation Act 1988* or the *Workers' Compensation Act 1927*.

To be entitled to compensation under the Act, the worker must have or have had a compensable disease. A person has a compensable disease if:

- the person has an ARD, and
- the contraction by the person of the disease is reasonably attributable to exposure to asbestos in the course of the person's employment as a worker during a relevant employment period in which the person's employment is connected with Tasmania.

### **Compensation under the Act**

Where the worker has an imminently fatal compensable ARD (less than 2 years' life expectancy from the date of correct diagnosis):

- The worker is entitled to lump sum compensation of 360 compensation units (as at 31 October 2011 a compensation unit was \$696.85. On 1 January 2012 a compensation unit increased to \$737.77) plus a further age-based payment (if under 80 years of age).
- The worker is also entitled to have their reasonable medical expenses paid for by the scheme. However, when total medical expenses reach \$87 000 a review is to be held to ensure that the worker is receiving the correct treatment.

Where the worker has a non-imminently fatal compensable ARD (more than 2 years' life expectancy from the date of correct diagnosis):

- A worker with a non-imminently fatal ARD must undergo an impairment assessment. Compensation is only payable if the worker has a WPI of 10 percent or more.
- Three lump sum payments are payable to the worker depending on the degree of impairment up to a total of 360 compensation units. However, if the worker is assessed at 51 percent or more WPI at their first assessment, they will receive all three lump sums at the same time — 360 compensation units.
- The worker is also entitled to the payment of reasonable medical expenses. There is no dollar cap on the payment of these expenses.
- Where the worker is still employed weekly payments are payable based on incapacity.
- Where a worker has received compensation in relation to a non-imminently fatal ARD which is subsequently diagnosed as being imminently fatal or they develop a different imminently fatal ARD, they will be paid any remaining lump sum compensation up to 360 compensation units. They will also receive the age-based payment if eligible.

Members of the family:

- Where a worker has died from a compensable ARD, the members of the worker's family are entitled to the same amount of lump sum compensation (not including payment of medical expenses or weekly payments) that the worker would have received had they not died. They may also be entitled to funeral expenses in relation to the deceased worker.
- Members of the family include a spouse (including a person in a significant relationship with the worker within the meaning of the *Relationships Act 2003*), and a child who is less than 22 years of age (natural child, adopted child and in some circumstances, a step-child).

Further information can be found at <http://www.asbestos.tas.gov.au> and in the publications: [Tasmanian Asbestos Compensation Information Brochure](#) and [Asbestos Compensation in Tasmania — A Guide](#).

### **Workers' Rehabilitation and Compensation Amendment (Validation) Act 2012**

The *Workers' Rehabilitation and Compensation Amendment (Validation) Act 2012* (the 2012 Validation Act) commenced on 30 August 2012. It amended the *Workers' Rehabilitation and Compensation Act 1988* (the Act) to remove any doubts about the validity of versions 2 and 3 of the Guidelines for the Assessment of Permanent Impairment (the Guidelines). The amendments also clarified that version 2 of the Guidelines took effect on and from 1 April 2011 to 30 September 2012 and version 3 of the Guidelines took effect on and from 1 October 2011. The Guidelines are used to assess the degree of WPI under both the Act and the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*. Both Acts provide lump sum compensation based on the percentage of impairment. Under the Act, the level of impairment is also relevant in relation to weekly compensation and for access to common law damages.

### **Northern Territory**

The Workers' Rehabilitation and Compensation Legislation Amendment Bill 2011 was passed in Parliament on 28 March 2012. The amendments commenced on 1 July 2012 and are as follows:

- The definition of 'worker' was amended to remove the reference to the Australian Business Number (ABN) and apply the 'Results Test', such that:
  - A person performing work for another person will be a worker **unless**, in relation to the work, the following tests apply:
    - (vi) the person is paid to achieve a stated outcome, and
    - (vii) the person has to supply the plant and equipment or tools of trade needed to carry out the work, and
    - (viii) the person is, or would be, liable for the cost of rectifying any defect in the work carried out.
- The new laws also provide that a person will not be considered a 'worker' for workers' compensation purposes where there is a personal services business determination in effect for the person performing the work under the *Income Tax Assessment Act 1997* (Cth).
- Section 65B of the Act was amended to allow access to compensation by workers injured in Australia but who reside overseas. The change will provide for weekly payments to continue if an injured worker is living outside Australia. The key elements of the change are:
  - For weekly compensation payments to continue the injured worker must, at not less than 3 month intervals, provide proof of identity and proof of ongoing incapacity.
  - The duration of compensation payments will be a maximum of 104 weeks from when the worker starts living outside Australia.
  - Flexibility will exist for applications to be made to the Work Health Court for payments beyond 104 weeks if the worker is permanently and totally incapacitated, or exceptional circumstances apply. However any such extension by the Court must be a single period that does not exceed 104 weeks.

- Section 65 of the Act was amended to provide immediate and fairer access to compensation for older workers who are injured and to reflect the Australian Government's decision to increase the qualifying age for the aged pension. The new legislation establishes a link to the qualifying age for the age pension under the *Social Security Act*. This will mean that the age limit in the *Workers' Rehabilitation and Compensation Act* will increase in stages between 2017 and 2023 in line with the increase in the pension age.
- In addition the legislation establishes a transitional benefit for workers who sustain a work injury after 1 July 2012 and who at the time of injury, are 63 years of age or over. These workers will be entitled to weekly compensation for a maximum period of 104 weeks, or until the worker attains 67 years of age, whichever occurs first.
- It should be noted that workers who are older than 67 years when they are injured, will be entitled to weekly compensation for up to 26 weeks (no change from the past situation).
- Section 49 of the Act was amended to provide certainty of the types of non-cash benefits that can be taken into account in calculating the worker's NWE for the purposes of payment of weekly compensation, i.e. limited to accommodation, meals and electricity.
- Section 89 of the Act was amended to bring the interest rate payable on late payments of weekly compensation in line with the interest rate applicable to Supreme Court judgement debts.
- Section 116 of the Act was amended to provide specific power of the Supreme Court to remit matters back to the Work Health Court in appropriate circumstances.

## Comcare

On 7 December 2011 a number of changes to the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) came into effect:

- the reintroduction of the ability to claim for off-site recess breaks — employees may claim for an injury that occurs off site during an ordinary recess from their place of employment, such as a lunch break
- the introduction of continuous coverage for certain employees working outside Australia where the Minister declares — by legislative instrument — the country or class of employees covered
- continuing the rights of an injured worker to claim compensation for medical expenses even where other forms of compensation are suspended
- enabling Comcare to access the Consolidated Revenue Fund to pay compensation to an injured worker with a long latency disease, where their employment was prior to 1 December 1988 but the disease manifested after that date, and
- enabling the development of regulations that prescribe time limits for claim determinations and reconsiderations.

## Firefighter amendments

Also on 7 December 2011 the *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011* came into effect. This Act introduced the presumption that, where a claimant has undertaken firefighting duties for certain periods and has acquired a

prescribed cancer, the cancer is presumed to be the result of the firefighting employment. The resulting changes to the SRC Act apply to claims with a date of injury on or after 4 July 2011.

## Legislative Review

On 24 July 2012 the Honourable Bill Shorten MP announced a review of the SRC Act. The review was required to inquire and report on:

- Any legislative anomalies and updates that need to be addressed, including:
  - identifying and resolving anomalies in the legislation and in the operation of the scheme
  - the framework to achieve the objectives of providing an equitable and cost-effective compensation system, with a particular emphasis on the improved rehabilitation of injured workers
  - ensuring fair and equitable financial, medical and rehabilitation support for injured workers and their families
  - a framework to resolve disputes quickly, fairly and at a low cost, and
  - ensuring the application of workers' compensation legislation does not disadvantage workers over the age of 65 and there is no gap between the workers' compensation age limit and the foreshadowed increase to the age pension eligibility age to 67 by 2023.
- The performance of the Comcare scheme and ways to improve its operation, including:
  - an examination of the different outcomes achieved by private and public sector employers concerning the recovery and return to work of injured workers, and
  - improved delivery of recovery and support services by Comcare.
- The financial framework of the Comcare scheme, including:
  - the financial sustainability of the scheme
  - a premium framework that improves and rewards scheme performance
  - the governance arrangements for Comcare, and
  - ensuring that the financial framework is consistent with contemporary prudential management practice.

The review of the SRC Act reported to the Australian Government on 25 February 2013. The report was publicly released on 30 March 2013. On 2 May 2013 the Honourable Minister for Employment and Workplace Relations Bill Shorten MP announced that the Government will prioritise 21 recommendations and will consider the remaining recommendations of the review.

## Seacare

### Coastal trading

On 1 July 2012, the jurisdictional coverage provisions of the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) and the *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI) Act) were amended by the *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments) Act 2012*.

The *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments) Act 2012* effectively expanded the coverage provisions of both the Seafarers' Act and the OHS(MI) Act to include coastal trading vessels specified in accordance with the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

## Seacare scheme review

On 16 October 2012 the Honourable Bill Shorten MP announced a review of the Seacare scheme. The review inquired and reported on:

- the jurisdictional coverage of the Seacare scheme, including:
  - the interaction of the Occupational Health and Safety (Maritime Industry) Act 1993 (OHS(MI) Act) with state and territory schemes and the Offshore Petroleum and Greenhouse Gas Storage Act 2006
  - a legislative framework for the Seacare scheme that identifies the relevant coverage for a particular maritime activity, and
  - the availability and scope for exemptions from the Seafarers Rehabilitation and Compensation Act 1992 (Seafarers' Act).
- the scope and necessity for amending and updating any legislative inconsistencies in the scheme, including:
  - any provisions in the legislation that needs to be updated
  - ensuring consistency between the Seafarers' Act and the *Safety, Rehabilitation and Compensation Act 1988*, and
  - legislative changes required to the OHS(MI) Act to ensure consistency with the model work health and safety laws.
- the scope for amending the *Seafarers Rehabilitation and Compensation Act 1992* to help reduce workers' compensation premium costs, and
- the governance arrangements for the Seacare scheme.

The review of the Seacare scheme reported to the Australian Government on 25 March 2013. On 20 May 2013 the Government released the final report of the review of the Seacare scheme by Mr Robin Stewart-Crompton.

## Department of Veterans' Affairs

### On Base Advisors supporting ADF members across Australia

Staff from the DVA started work in October 2011 at 35 Australian Defence Force (ADF) bases across the country to help Defence members and their families better connect with DVA services. The work being done by the advisors provides for a smoother transition into civilian life following discharge. The On Base Advisors work directly with ADF members, providing them with assistance and information about support they may be entitled to receive such as health services, rehabilitation and compensation. DVA is providing either a full or part-time presence on bases, depending on the local need. The advisors work out of Defence Health Centres or within the health precinct, allowing all ADF members to access the service, regardless of their location. This service is a part of a much larger program of work, the Support for Wounded, Injured or Ill Program (SWIIP), which will enhance the way Defence and DVA work together in supporting and caring for ADF members.

### Support for Injured or Ill Project's Report on the Review of Current Practices

The Department of Defence and DVA released the Support for Injured or Ill Project's Report on the Review of Current Practices on 23 April 2012 —

[www.Defence.gov.au/Publications/SIIPReviewCurrentPractices.pdf](http://www.Defence.gov.au/Publications/SIIPReviewCurrentPractices.pdf)

The review was initiated by Defence to support the development of a seamless and integrated support process for injured or ill ADF members. The report concluded that the current system is generally good and results indicate a high return to work rate for rehabilitated ADF members. It also recommends that outcomes would be improved through a more coordinated and integrated approach to health care and support. Close involvement with DVA is essential to the development of a seamless and integrated system.

Defence and DVA have now jointly initiated a second phase of work to continue improving the system. This second phase of work, the Support for Wounded, Injured or Ill Program (SWIIP), aims to deliver consistent support to all wounded, injured or ill members during their service and after transition from the ADF. Once implemented, SWIIP will provide a 'whole of life' medical, rehabilitation, compensation and transition framework for Defence. It will include the early identification of health and income support requirements post discharge, participation in transition management seminars, as well as pre and post deployment briefings. SWIIP will make the recipient the central focus of support and ensure both DVA and Defence are focused on outcomes, not process. It will reduce the complexity involved in accessing support and ensure better integration.

### **Release of MyAccount**

A new website <https://myaccount.dva.gov.au/> offering DVA clients a more immediate way of conducting business with DVA was launched on 11 May 2012 by the Minister for Veterans' Affairs, the Honourable Warren Snowdon MP.

MyAccount offers a variety of services including:

- viewing and requesting forms and factsheets
- booking transport to medical appointments
- viewing payments and Repatriation Health card information
- requesting replacement cards
- lodging travel claims
- requesting additional benefits
- changing contact details, and
- viewing the status of claims.

### **Government response to the Review of Military Compensation Arrangements**

As part of the 2012–13 Budget the Government has announced its response to the Review of Military Compensation Arrangements and committed \$17.4 million over the next four years to implement 96 recommendations flowing from the 108 recommendations of the Review. The majority of these changes will be implemented from 1 July 2013 and will deliver improvements to current arrangements for compensation and health care, increased financial compensation for eligible members and families, and improved training for those who provide advice to the veteran community on entitlements.

The main initiatives that will be introduced include:

- a new method for calculating permanent impairment compensation across multiple Acts (or transitional claims) under the MRCA. All those who have claimed permanent impairment compensation under MRCA and who have been subject to the method for permanent



impairment across multiple Acts since the Act commenced on 1 July 2004, are to be reassessed with many receiving increased compensation

- around 6 000 former ADF members with chronic health conditions accepted under the *SRC Act*, subject to a needs assessment showing long-term treatment needs, are to receive a White Repatriation Health Card for specific conditions and supplementary payment for pharmaceuticals
- earlier access to compensation with claims under permanent impairment compensation under the MRCA for multiple conditions receiving compensation as each condition stabilises, rather than having to wait for all conditions to stabilise
- the Eligible Young Person periodic payment under MRCA is to be increased to match the SRC Act equivalent (current weekly rates are \$87.57 under the MRCA and \$130.89 under the SRC Act)
- compensation payable for financial advice under MRCA for certain beneficiaries who have made a choice about how they want to receive their benefits is to increase to \$2400 (currently \$1592), and
- greater flexibility for future wholly dependant partners in the way they receive compensation with the option to convert part of their compensation to a lump sum payment.

In addition, the Government's response will improve processes for the delivery of benefits and services under the MRCA including:

- a boost to the education of providers, clients and their representatives to ensure that they remain informed about the full range of entitlements available through DVA for current serving ADF members, reservists, and their families in the event of injury or death
- better information on rehabilitation, transition from the ADF and compensation offsetting
- more initiatives to improve the quality and timeliness of claims processing
- better pathways to transition from ADF to civilian life
- a new model for providing claims representation on complex claims, and
- improved cooperation between Defence and DVA through an extra Military Rehabilitation and Compensation Commission member nominated by the Minister for Defence and improved management of the relationship between DVA and Defence.

Three recommendations are subject to further consideration and 11 recommendations of the Review were not supported. Of those not supported, two were replaced with favourable outcomes. Details of the Government's full response to the Review can be found at [http://www.dva.gov.au/pensions\\_and\\_compensation/Military%20Compensation%20Review/Pages/index.aspx](http://www.dva.gov.au/pensions_and_compensation/Military%20Compensation%20Review/Pages/index.aspx).



## Chapter 2: Schemes at a glance

This chapter provides brief information on some of the important aspects of workers' compensation legislation and how they differ between jurisdictions. Later chapters deal with some of these aspects in more detail. Below is a summary of the tables contained in this chapter and their content:

2.1 **Jurisdictional contacts.**

2.2 **Agencies responsible for overseeing workers' compensation in each jurisdiction.**

2.3 **Key features of schemes** — provides a summary of some of the key features including the number of employees covered, the number and rate of serious claims and the standardised average premium rates.

2.4 **Summary of coverage** — Tables 2.4a to 2.4e provide a summary of coverage including who is covered (coverage of employees and coverage of contractors and labour hire workers), whether coverage is extended to injuries that occur during journeys and breaks and what is covered (definition of injury and employment contribution) and retirement provisions. More detailed information on these topics can be found in Chapter 3.

2.5 **Summary of benefits** — provides a summary of weekly payments, medical and hospital payments, lump sum payments for permanent impairment and death entitlements. More detail is provided in Chapter 4.

2.6 **Prescribed time periods for injury notification** — early intervention is essential for successful outcomes in return to work. Table 2.6 shows the timeframes for injury notification, claims submissions etc. that are prescribed in most jurisdictions.

2.7 **Prescribed time periods for claim submission.**

2.8 **Prescribed time periods for payments** — Table 2.8 summarises when eligibility for payments begin, when payments start, when the employer passes on payments to injured workers, period specified for medical invoices to be sent to insurers, and when medical expenses are accepted and paid.

2.9 **Dispute resolution process** — Table 2.9 outlines the procedures followed by each jurisdiction. The process helps injured workers and their employers resolve issues arising from workers' compensation claims at an early stage to prevent the issues going to court.

2.10 **Remuneration for the purposes of premium calculation** — Table 2.10 summarises the basis for insurers to quantify workers' compensation premiums, which are paid by employers annually. Premiums are expressed as a percentage of an employer's total payroll.

2.11 **Employer excess** — Some schemes require employers to pay an excess before the workers' compensation insurer begins making payments. In some cases, employers may 'buy out' their excess. Table 2.11 outlines the type and amount of excess payable in each jurisdiction.

2.12 **Uninsured employer provisions** — In all jurisdictions it is compulsory for employers to have workers' compensation insurance for their workers. However, for a variety of reasons

some workers may not be covered. Table 2.12 outlines the provisions in place in each jurisdiction to ensure that workers of uninsured employers receive the same benefits as those covered.

**2.13 Leave while on workers' compensation** — Normal leave arrangements such as sick, recreation and long service leave may be affected when a worker is receiving workers' compensation payments. Also the amount of compensation may be affected by taking leave while on workers' compensation. Table 2.13 outlines provisions in workers' compensation or other legislation relating to leave accrual while on workers' compensation and the effect of taking leave on compensation paid.

**2.14 Superannuation and workers' compensation** — Table 2.14 provides information on whether the schemes include superannuation as wages for premium calculations and as part of income replacement payments.

Table 2.1: Jurisdictional contacts

Contact	Position	Phone No.	Fax No.	Email	Postal Address	Internet	
<b>New South Wales</b>	Chris Koutoulas	Director, Product Development and Support.	13 10 50 (general enquiries). (02) 8281 6265 (specific).	(02) 9271 6265	<a href="mailto:chris.koutoulas@workcover.nsw.gov.au">chris.koutoulas@workcover.nsw.gov.au</a>	Workers Compensation Insurance Division, WorkCover NSW, Locked Bag 2906, LISAROW NSW 2252.	<a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a>
<b>Victoria</b>	Rachel Cubela	Director, Corporate Legal Services.	1800 136 089 (general). (03) 9641 1064 (specific).	(03) 9641 1769	<a href="mailto:rachel_cubela@worksafe.vic.gov.au">rachel_cubela@worksafe.vic.gov.au</a>	WorkSafe Victoria GPO Box 4306 MELBOURNE VIC 3001.	<a href="http://www.worksafe.vic.gov.au">www.worksafe.vic.gov.au</a>
<b>Queensland</b>	Paul Lunney	Director, Workers' Compensation Policy, Department of Justice and Attorney-General.	(07) 3225 2276 (specific). 1300 361 235 (Q-COMP). 1300 362 128 (WorkCover Queensland).	(07) 3404 3550	<a href="mailto:paul.lunney@justice.qld.gov.au">paul.lunney@justice.qld.gov.au</a>	Department of Justice and Attorney-General, WHSQ, GPO Box 69, BRISBANE QLD 4001.	<a href="http://www.justice.qld.gov.au">www.justice.qld.gov.au</a>
<b>Western Australia</b>	Chris White	General Manager, Legislation and Scheme Information.	(08) 9388 5555 (general enquiries).  (08) 9388 5512 (specific).	(08) 9388 5550	<a href="mailto:Chris.White@workcover.wa.gov.au">Chris.White@workcover.wa.gov.au</a>	Legislation and Scheme Information WorkCover WA 2 Bedbrook Place SHENTON PARK WA 6008.	<a href="http://www.workcover.wa.gov.au">www.workcover.wa.gov.au</a>
<b>South Australia</b>	Jane Hunt	Acting Director, Strategy and Government Relations, Corporate Services, WorkCoverSA.	131 855 (general enquiries.) (08) 8233 2374 (specific enquiries).	(08) 8233 2044	<a href="mailto:jhunt@workcover.com">jhunt@workcover.com</a>	Strategy and Government Relations, WorkCoverSA, GPO Box 2668, ADELAIDE SA 5001 DX660.	<a href="http://www.workcover.com">www.workcover.com</a>
<b>Tasmania</b>	Rod Lethborg	Acting Director, Policy and Planning Branch, Workplace Standards, Tasmania.	(03) 6233 3182 (general enquiries outside Tasmania). 1300 366 322 (general enquiries within Tasmania).	(03) 6233 8338	<a href="mailto:Rod.Lethborg@justice.tas.gov.au">Rod.Lethborg@justice.tas.gov.au</a>	Workplace Standards Tasmania, PO Box 56 ROSNY PARK TAS 7018.	<a href="http://www.justice.tas.gov.au">www.justice.tas.gov.au</a>
<b>Northern Territory</b>	Bevan Pratt	A/Director, Rehabilitation and Compensation.	(08) 8999 5018 1800 250 713 (general enq).	(08) 8999 5141	<a href="mailto:bevan.pratt@nt.gov.au">bevan.pratt@nt.gov.au</a> <a href="mailto:ntworksafe@nt.gov.au">ntworksafe@nt.gov.au</a>	Rehabilitation and Compensation Unit, NT WorkSafe, GPO Box 2391, DARWIN NT 0801.	<a href="http://www.worksafe.nt.gov.au">www.worksafe.nt.gov.au</a>
<b>Australian Capital Territory</b>	Mark McCabe (operations)  Meg Brighton (policy)	Work Safety Commissioner and Senior Director, WorkSafe ACT, Dept of Justice and Community Services.  Director, Continuous Improvement and Workers' Compensation Branch, Chief Minister and Treasury Directorate.	(02) 6207 3000  13 22 81	(02) 6205 0336	<a href="mailto:mark.mccabe@act.gov.au">mark.mccabe@act.gov.au</a>  <a href="mailto:meg.brighton@act.gov.au">meg.brighton@act.gov.au</a>	GPO Box 158, CANBERRA ACT 2601.	<a href="http://www.worksafe.act.gov.au/">www.worksafe.act.gov.au/</a>  <a href="http://www.cmd.act.gov.au">www.cmd.act.gov.au</a>
<b>C'wealth Comcare</b>	Joe White	A/Director, Compensation Policy.	1300 366 979	(02) 6274 8576	<a href="mailto:joe.white@comcare.gov.au">joe.white@comcare.gov.au</a>	Compensation Policy, Comcare, GPO Box 9905, CANBERRA ACT 2601.	<a href="http://www.comcare.gov.au">www.comcare.gov.au</a>
<b>C'wealth Seacare</b>	Andrew Graves	Director, WHS Policy and Seacare Section.	(02) 6275 0070	(02) 6275 0067	<a href="mailto:graves.andrew@comcare.gov.au">graves.andrew@comcare.gov.au</a>	GPO Box 9905, Canberra ACT 2601.	<a href="http://www.seacare.gov.au">www.seacare.gov.au</a>
<b>C'wealth DVA</b>	Mike Armitage	Director, Rehabilitation, External Liaison and Communication Section.	(02) 6289 4899	(02) 6289 4854	<a href="mailto:Mike.armitage@dva.gov.au">Mike.armitage@dva.gov.au</a>	Rehabilitation and Entitlements Policy Branch, Department of Veterans' Affairs, PO Box 9998, WODEN ACT 2606.	<a href="http://www.dva.gov.au">www.dva.gov.au</a>
<b>New Zealand</b>	John Beaglehole	General Manager, Insurance and Prevention Services.	+64 4 918 7700 (general). +64 4 816 7365 (specific).	+64 4 816 7051	<a href="mailto:John.beaglehole@acc.co.nz">John.beaglehole@acc.co.nz</a> <a href="mailto:keith.mclea@acc.co.nz">keith.mclea@acc.co.nz</a>	Accident Compensation Corporation, PO Box 242, Wellington, New Zealand.	<a href="http://www.acc.co.nz">www.acc.co.nz</a>

Table 2.2: Agencies responsible for overseeing workers' compensation in each jurisdiction

	Policy	Premium	Claims	Current legislation	Disputes
<b>New South Wales</b>	<a href="#">WorkCover NSW.</a>	<a href="#">WorkCover NSW.</a>	7 private sector Scheme Agents, 59 self-insurers, 7 specialised insurers and SICorp (through the Treasury Managed Fund) for most public sector employers.	<a href="#">Workplace Injury Management and Workers Compensation Act 1998</a> and <a href="#">Workers Compensation Act 1987.</a>	<a href="#">Workers Compensation Commission.</a>
<b>Victoria</b>	WorkSafe Victoria. Victorian WorkCover Authority.	WorkSafe Victoria.	5 private sector agents and 38 self insurers.	<i>Accident Compensation Act 1985</i> and <i>Accident Compensation (WorkCover Insurance) Act 1993.</i>	WorkSafe. Accident Compensation Conciliation Service (ACCS), Medical Panels, Magistrates' or County Court.
<b>Queensland</b>	<a href="#">Department of Justice and Attorney-General.</a>	<a href="#">WorkCover Queensland.</a>	WorkCover Queensland and 25 self insurers.	<a href="#">Workers' Compensation and Rehabilitation Act 2003.</a>	<a href="#">Q-COMP Queensland Industrial Relations Commission</a> or <a href="#">Industrial Magistrate, Industrial Court.</a>
<b>Western Australia</b>	WorkCover WA.	Insurers subject to WorkCover WA oversight.	8 private sector insurers, 27 self-insurers, (exempt employers) and the Insurance Commission of Western Australia.	<a href="#">Workers' Compensation and Injury Management Act 1981.</a>	Conciliation and Arbitration Services.
<b>South Australia</b>	<a href="#">WorkCoverSA.</a>	<a href="#">WorkCoverSA.</a>	1 private sector agent. 66 private self-insurers. 56 Crown self-insurers.	<a href="#">Workers Rehabilitation and Compensation Act 1986</a> and <a href="#">WorkCover Corporation Act 1994.</a>	<a href="#">Workers Compensation Tribunal Medical Panels SA.</a> <a href="#">WorkCover Ombudsman.</a>
<b>Tasmania</b>	Department of Justice and WorkCover Tasmania.	Licensed private sector insurers subject to WorkCover Tas oversight.	7 private sector insurers. 11 self-insurers.	<i>Workers' Rehabilitation and Compensation Act 1988.</i>	Workers Rehabilitation and Compensation Tribunal, Supreme Court.
<b>Northern Territory</b>	Department of Business. NT WorkSafe.	Private sector insurers.	5 private sector insurers.	<a href="#">Workers Rehabilitation and Compensation Act</a>	Mediation coordinated by NT WorkSafe. Work Health Court.
<b>Australian Capital Territory</b>	WorkSafe ACT, Justice and Community Services Directorate.	Private sector insurers.	7 private sector insurers. 7 self-insurers.	<a href="#">Workers Compensation Act 1951</a>	Conciliation, arbitration, Magistrates Court, Supreme Court.
<b>C'wealth Comcare</b>	<a href="#">Department of Education, Employment and Workplace Relations.</a>	Comcare.	Comcare/Self-insurers and their agents. DVA for claims relating to military service rendered before 1 July 2004.	<a href="#">Safety, Rehabilitation and Compensation Act 1988.</a>	AAT, Federal Court.
<b>C'wealth Seacare</b>	<a href="#">Department of Education, Employment and Workplace Relations.</a>	Private sector insurers.	Employers/ insurers.	<a href="#">Seafarers Rehabilitation and Compensation Act 1992.</a>	AAT, Federal Court.
<b>C'wealth DVA</b>	Military Rehabilitation and Compensation Commission.	N/A	<a href="#">DVA</a>	<a href="#">Military Rehabilitation and Compensation Act 2004.</a>	Veterans' Review Board, AAT, Federal Court.
<b>New Zealand</b>	Ministry of Business, Innovation, and Employment (former) Department of Labour.	Accident Compensation Corporation.	Accident Compensation Corporation.	<i>Accident Compensation Act 2001.</i>	Accident Compensation Corporation, mediation, Dispute Resolution Services Limited, court system.

Table 2.3: Key features of schemes

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth	New Zealand
<b>Employees covered for workers' compensation</b>	3 165 700 (2010–11)	2 643 300	1 965 200	1 094 100	729 700	209 000	115 000	132 300  Private Sector Workforce.	377 800	1 806 700
<b>Number of serious claims with one week or more incapacity (2010–11)</b>	43 280	23 760	28 910	13 110	9 000	3 270	1 290	1720	2 790	17 830
<b>Number of serious claims per 1000 employees (2010–11)</b>	13.7	9.0	14.7	12.0	12.3	15.6	11.2	13.0	7.4	9.9
<b>Compensated deaths per 100 000 employees (2010–11)</b>	1.54	0.9	1.7	2.7	1.8	1.9	2.6	0.9 (ACT Private Sector only).	4.5	8.1
<b>Scheme funding</b>	Managed	Central	Central	Private insurers.	Central	Private insurers.	Private insurers.	Private insurers.	Central	Central
<b>Standardised Average Premium rate (% of payroll)</b>	1.76 2010–11  1.82 2009–10	1.35 2010–11  1.39 (2009–10)	1.22 2010–11  1.12 (2009–10)	1.14 2010–11  1.32 (2009–10)	2.49 2010–11  2.76 (2009–10)	1.50 (2010–11)  1.40 2009–10	1.79 2010–11  1.74 (2009–10)	2.05 2010–11  2.14 (2009–10)	0.92 2010–11  0.91 (2009–10)	1.06 2010–11  0.94 (2009–10)
<b>Standardised Funding Ratio (%)</b>	94 2010–11	127 2010–11	124 2010–11	131 2010–11	67 2010–11	130 2010–11	92 2010–11	N/A	101 2010–11	118 2010–11
<b>Excess/ Unfunded (30 June 2012)</b>	\$1497m unfunded.	\$461m unfunded.	\$541m funded.	N/A	\$1389m unfunded.	Nothing provided.	Nil	N/A	\$133.4m	\$28.3m excess. Work Account Only.
<b>Access to Common Law</b>	Yes	Yes — limited.	Yes	Yes	No	Yes — limited.	No	Yes	Yes — limited.	

## Coverage of workers —

Determining what type of workers should be covered by workers' compensation is very important as penalties can apply if an employer does not insure its workers. A number of jurisdictions apply tests to determine whether or not a worker requires coverage. Table 2.4a provides a summary of coverage and Table 2.4b provides information to help to determine whether or not a worker is covered. Employers should contact their workers' compensation authority if they are unclear whether or not a worker is covered.

**Table 2.4a: Summary of coverage (see Table 3.1a for more information)**

	Coverage of employees	Coverage of independent contractors	Coverage of labour hire workers
<b>New South Wales</b>	<p>“worker means a person who has entered into or works under a contract of service or a training contract with an employer (whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, and whether the contract is oral or in writing). However, it does not include:</p> <p>a) a member of the NSW Police Force who is a contributor to the Police Superannuation Fund under the <a href="#">Police Regulation (Superannuation) Act 1906</a>, or</p> <p>b) a person whose employment is casual (that is for 1 period only of not more than 5 working days) and who is employed otherwise than for the purposes of the employer’s trade or business, or</p> <p>c) an officer of a religious or other voluntary association who is employed upon duties for the association outside the officer’s ordinary working hours, so far as the employment on those duties is concerned, if the officer’s remuneration from the association does not exceed \$700 per year, or</p> <p>d) except as provided by Schedule 1, a registered participant of a sporting organisation (within the meaning of the <a href="#">Sporting Injuries Insurance Act 1978</a>) while:</p> <p>(i) participating in an authorised activity (within the meaning of that Act) of that organisation, or</p> <p>(ii) engaged in training or preparing himself or herself with a view to so participating, or</p> <p>(iii) engaged on any daily or periodic journey or other journey in connection with the registered participant so participating or the registered participant being so engaged, if, under the contract pursuant to which the registered participant does any of the things referred to above in this paragraph, the registered participant is not entitled to remuneration other than for the doing of those things.” — s4(1) (1998 Act).</p>	Not unless contractor is a deemed worker pursuant to Schedule 1, 1998 Act.	Yes, labour hire firm held to be employer. Clause 2A Schedule 1, 1998 Act.
<b>Victoria</b>	<p>“worker means an individual —</p> <p>a) who:</p> <p>(i) performs work for an employer; or</p> <p>(ii) agrees with an employer to perform work at the employer’s direction, instruction or request, whether under a contract of employment (whether express, implied, oral or in writing) or otherwise; or</p> <p>b) who is deemed to be a worker under this Act” — s5(1).</p>	No, if employed under contract for service (unless they are a deemed worker); they are covered if enter into any form of contract of employment (definition of ‘worker’ in s5(1)).	Yes, labour hire firm held to be employer (definition of ‘worker’ in s5(1)).
<b>Queensland</b>	A worker is an individual who works under a contract of service (s11 <i>Workers’ Compensation and Rehabilitation Act 2003</i> ). A person who works under a contract, or at piecework rates, for labour only or substantially for labour only is a worker (Schedule 2 (1.1), <i>Workers’ Compensation and Rehabilitation Act 2003</i> ).	No, if employed under contract for services.	Yes, labour hire firm held to be employer.
<b>Western Australia</b>	<p>Any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise and whether the contract is expressed or implied, is oral or in writing. The meaning of worker also includes:</p> <p>a) any person to whose service any industrial award or industrial agreement applies, and any person engaged by another person to work for the purpose of the other person’s trade or business under a contract with him for service, the remuneration by whatever means of the person so working being in substance for his personal manual labour or services — s5(1).</p>	No, unless employed under contract for service and remunerated in substance for personal manual labour or service.	Yes, labour hire firm held to be employer.



	Coverage of employees	Coverage of independent contractors	Coverage of labour hire workers
<b>South Australia</b>	<p>a) a person by whom work is done under a contract of service (whether or not as an employee)</p> <p>b) a person who is a worker by virtue of — s103A</p> <p>c) a self-employed worker</p> <p>and includes a former worker and the legal personal representative of a deceased worker — s3(1).</p>	<p>Yes, if covered by definitions in s3:</p> <ul style="list-style-type: none"> <li>• 'worker' which includes a person by whom work is one under a contract of service (whether or not as an employee).</li> <li>• 'contract of service' which includes if person undertakes prescribed work or work of a prescribed class.</li> </ul> <p>See also Regulation 5 and s3(6).</p>	Yes, labour hire firm held to be employer — s3(6).
<b>Tasmania</b>	<ul style="list-style-type: none"> <li>• Any person who has entered into, or works under, a contract of service or training agreement with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is express or implied, or is oral or in writing, and</li> <li>• Any person or class taken to be a worker for the purposes of the Act — s3(1).</li> </ul>	Persons engaged under a contract for services are not covered unless the contract is for work exceeding \$100 that is not incidental to a trade or business regularly carried out by the contractor — s4B.	Labour hire workers are generally covered with the labour hire company taken to be the employer.
<b>Northern Territory</b>	<p>A person performing work for another person will be a worker <b>unless</b>, in relation to the work, the following 'results test' apply:</p> <ul style="list-style-type: none"> <li>• the person is paid to achieve a stated outcome, and</li> <li>• the person has to supply the plant and equipment or tools of trade needed to carry out the work, and</li> <li>• the person is, or would be, liable for the cost of rectifying any defect in the work carried out.</li> </ul> <p>The new laws also provide that a person will not be considered a 'worker' for workers compensation purposes where there is a personal services business determination in effect for the person performing the work under the <i>Income Tax Assessment Act 1997</i> (Cth).</p>	Yes — if does not meet the results test or have a personal services business determination in effect.	If the individual's contract or agreement is with the Labour Hire business they are the employer.
<b>Australian Capital Territory</b>	Individual who has entered into or works under a contract of service with an employer, whether the contract is expressed or implied, oral or written — s8(1)(a), workers for labour only or substantially labour only s8(1)(b), or works for another person under contract unless they are paid to achieve a stated outcome, and has to supply plant and equipment, and is (or would be) liable for the cost of rectifying any defective work s8(1)(i)(a-c) OR has a personal services business determination s8(1)(ii).	No, if employed under contract for services. However, there are provisions for the coverage of regular contractors.	Yes, where the individual is not an executive officer of the corporation and: <ul style="list-style-type: none"> <li>• the individual has been engaged by the labour hirer under a contract for services to work for someone other than the labour hirer</li> <li>• there is no contract to perform work between the individual and person for who work is to be performed</li> <li>• the individual does all or part of the work.</li> </ul>
<b>C'wealth Comcare</b>	Employee — a person employed by the Commonwealth or by a Commonwealth Authority whether the person is so employed under a law of the Commonwealth or a Territory or under a contract of service or apprenticeship, or a person who is employed by a licensed corporation or ACT Government.	No, if employed under contract for service.	Possibly, according to definition of nature of contract.
<b>C'wealth Seacare</b>	Seafarer (person employed in any capacity on a prescribed ship on the business of the ship, other than: a pilot, a person temporarily employed on the ship in port, or a person defined as a special personnel in s283 of the <i>Navigation Act</i> ), trainee, person attending approved industry training or registering availability for employment or engagement on a prescribed ship — s4	No, compensation only through employment of employees.	Possibly, according to definition of nature of contract.
<b>C'wealth DVA</b>	Member or former member of the Permanent Forces, Reserves, or cadets of the Australian Defence Force who has rendered service on or after 1 July 2004 — MRCA s5.	Only if a "declared member" — s8.	Only if a "declared member" — s8.
<b>New Zealand</b>	An earner is a natural person who engages in employment for the purposes of pecuniary gain, whether or not as an employee — s(6).	Yes	Yes, labour hire firm held to be employer.

**Table 2.4b: Guidelines and information for determining coverage of workers**

Guides and information	
New South Wales	<a href="#">Worker or contractor?</a>
Victoria	<a href="#">Contractors and workers.</a> <a href="#">Workers' rights and responsibilities.</a>
Queensland	<a href="#">Worker's guidelines.</a> <a href="#">Worker determination.</a>
Western Australia	<a href="#">Workers' Compensation: A Guide for Employers.</a>
South Australia	<a href="#">'A Guide to the Definition of Worker'</a> and <a href="#">Chapter 3 of the Claims Operational Guidelines.</a>
Tasmania	A person who is engaged under a contract of service would be regarded at common law as being an employee whereas a person who is engaged under a contract for service is regarded as being an independent contractor. Exception where contract is for work not related to a trade or business regularly carried on by the contractor in the contractor's own name or under a business or firm name — s4B.
Northern Territory	N/A
Australian Capital Territory	Individual who has entered into or works under a contract of service with an employer, whether the contract is expressed or implied, oral or written — s8(1)(a), workers under a contract, or at piecework rates for labour only or substantially labour only s8(1)(b), or works for another person under contract UNLESS they are paid to achieve a stated outcome, and has to supply plant and equipment, and is (or would be) liable for the cost of rectifying any defective work s8(1)(i)(a—c) OR has a personal services business determination s8(1)(ii). <a href="#">ACT Wages and Earnings Guide.</a>
C'wealth Comcare	<a href="#">Am I eligible to make a claim?</a>
C'wealth Seacare	N/A
C'wealth DVA	<a href="#">Military Rehabilitation and Compensation Information Booklet.</a>
New Zealand	N/A

Table 2.4c: Coverage of journeys and breaks

	Journeys to and from work	Work-related travel	Breaks — onsite	Breaks — offsite
<b>New South Wales</b>	<p>Yes, (some restrictions) for:</p> <ul style="list-style-type: none"> <li>• police officers, paramedics, fire fighters.</li> <li>• bush firefighters and emergency service volunteers.</li> <li>• workers injured while working in or around a coal mine.</li> <li>• people with a dust disease claim under the <i>Workers' Compensation (Dust Diseases) Act 1942</i> — Clauses 4, 25 and 26, Part 19H, Schedule 6, 1987 Act.</li> </ul> <p>For all other workers with injuries received on or after 19 June 2012 there must be a real and substantial connection between employment and the accident or incident out of which the personal injury arose — s10 1987 Act and Clause 18, Part 19H, Schedule 6, 1987 Act.</p>	Yes — s10, 1987 Act.	Yes — s11 1987 Act.	Yes — s11 1987 Act.
<b>Victoria</b>	No — s83.	Yes, some restrictions — s83.	Yes — s83.	Yes — s83.
<b>Queensland</b>	Yes, some restrictions — s35.	Yes — s34.	Yes — s34(1)(c).	Yes — s34(1)(c).
<b>Western Australia</b>	No — s19(2).	Yes — s19(1).	Yes	No reference in the Act. Coverage depends on factual circumstances or common law.
<b>South Australia</b>	No — s30(5).	Yes — s30.	Yes, if the break is authorised — s30(3).	No
<b>Tasmania</b>	No, some exceptions — s25(6).	Yes — s25(6).	Yes — s25(6).	No, some exceptions — s25(6).
<b>Northern Territory</b>	Yes, some restrictions — s4.	Yes — s4.	Yes — s4.	Yes — s4.
<b>Australian Capital Territory</b>	Yes — s36.	Yes — s36.	No reference.	No reference.
<b>C'wealth Comcare</b>	No, some exceptions — s6(1C).	Yes — s6(1)(d).	Yes — s6(1)(b).	Yes, since 7 December 2011 ('ordinary recess').
<b>C'wealth Seacare</b>	Yes — s9(e).	Yes — s9(e).	Yes — s9(b).	Yes — s9(b).
<b>C'wealth DVA</b>	Yes — s.27; exceptions — s.35.	Yes — s.27; exceptions — s.35.	Yes — s.27.	Yes — s.27.
<b>New Zealand</b>	Yes, some restrictions — s28(1)(b).	Yes — s28(1)(a).	Yes — s28(1)(b).	Yes, some restrictions.

Table 2.4d: Definition of injury and employment contribution

	Definition of injury and relationship to employment	Contribution of employment to injury
<b>New South Wales</b>	<p>"...injury:</p> <p>a) means personal injury arising out of or in the course of employment,</p> <p>b) includes a disease injury, which means:</p> <p>(i) a disease that is contracted by a worker in the course of employment but only if the employment was the main contributing factor to contracting the disease, and</p> <p>(ii) the aggravation, acceleration, exacerbation or deterioration in the course of employment of any disease, but only if the employment was the main contributing factor to the aggravation, acceleration, exacerbation or deterioration of the disease, and</p> <p>c) does not include (except in the case of a worker employed in or about a mine) a dust disease, as defined by the <a href="#">Workers' Compensation (Dust Diseases) Act 1942</a>, or the aggravation, acceleration, exacerbation or deterioration of a dust disease, as so defined."</p> <p>— s4, 1987 Act.</p>	<p>"No compensation is payable under this Act in respect of an injury (other than a disease injury) unless the employment concerned was a substantial contributing factor to the injury.</p> <p>Note. In the case of a disease injury, the worker's employment must be the main contributing factor. See s4." — s9A(1) 1987 Act.</p>
<b>Victoria</b>	<p>"... an injury arising out of, or in the course of, any employment . . ." — s82(1).</p>	<p>Compensation is not payable in respect of the following injuries unless the worker's employment was a significant contributing factor to the injury: a) a heart attack or stroke injury b) a disease contracted by a worker in the course of employment (whether at, or away from, the place of employment) c) a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease — s82(2B) and s82(2C).</p>
<b>Queensland</b>	<p>"... a personal injury arising out of, or in the course of, employment . . ." — s32(1).</p>	<p>A significant contributing factor — s32(1).</p>
<b>Western Australia</b>	<p>"... a personal injury by accident arising out of or in the course of the employment . ." — s5.</p>	<p>Injury includes: a disease contracted by a worker in the course of his employment at or away from his place of employment and to which the employment was a contributing factor and contributed to a significant degree — s5.</p>
<b>South Australia</b>	<p>"... injury arises out of, or in the course of employment . . ." — s30.</p>	<p>A substantial cause (for psychiatric injuries only — s30A(a)).</p>
<b>Tasmania</b>	<p>"An injury, not being a disease, arising out of, or in the course of employment" — s25(1)(a).</p> <p>"an injury, which is a disease, to which his employment contributed to a substantial degree" — s25(1)(b).</p>	<p>To a substantial degree, that is, employment is the 'major or most significant factor' (for diseases only) — s3(2A). Employment being the major or most significant contributing factor is also a requirement in relation to injuries that are a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease (s3(1) — in definition of "injury").</p>
<b>Northern Territory</b>	<p>"... a physical or mental injury . . . out of or in the course of employment . . ." — s3 and s4.</p>	<p>To a material degree, (for diseases — s4(6) and gradual process — (s4(5)) that is employment was the real proximate or effective cause (S4(8)).</p>
<b>Australian Capital Territory</b>	<p>"a physical or mental injury (including stress) . . . includes aggravation, acceleration or recurrence of a pre-existing injury . . . arising out of, or in the course of, the worker's employment . . ." — s4 and s31.</p>	<p>A substantial contributing factor — s31(2).</p>
<b>C'wealth Comcare</b>	<p>For injuries: "... a physical or mental injury arising out of, or in the course of, the employee's employment", or</p> <p>"... an aggravation of a physical or mental injury (other than a disease) suffered by an employee..." — s5A.</p> <p>For diseases: "an ailment suffered by an employee; or an aggravation of such an ailment that was contributed to, to a significant degree, by an employee's employment..." — s5B.</p>	<p>Comcare: To a significant degree (for diseases) — s5B with matter to be taken into account being set out in a non-exclusive list and with 'significant' being defined as "substantially more than material".</p>
<b>C'wealth Seacare</b>	<p>"... a physical or mental injury arising out of, or in the course of, the employee's employment . . .", or</p> <p>'... an aggravation of a physical or mental injury (other than a disease) ...' — s3.</p>	<p>To a material degree (for diseases) — s10(1).</p>
<b>C'wealth DVA</b>	<p>Refer s27, s29(1), s29(2) and s30 of MRCA.</p> <p>1. any injury or disease (or recurrence) that:</p>	<p>Minimum material contribution required ("arose out of, or was attributable to") — MRCA s27b and s27c.</p> <p>In a material degree (for aggravations only) — MRCA, s27d and s30.</p>

	Definition of injury and relationship to employment	Contribution of employment to injury
	<ul style="list-style-type: none"> <li>• resulted from an occurrence that happened on service</li> <li>• arose out of, or was attributable to, any service</li> <li>• due to an accident not occurring or a disease not being contracted but for service, or but for changes in the person's environment due to service</li> <li>• resulted from an accident that occurred whilst travelling, while a member rendering peacetime service but otherwise than in the course of duty, on a journey to a place for the purpose of performing duty; or away from a place of duty upon having ceased to perform duty, or</li> <li>• arising from treatment provided by the Commonwealth.</li> </ul> <p>2. any aggravation of an injury or disease, or its signs and symptoms:</p> <ul style="list-style-type: none"> <li>• contributed to in a material degree by or was aggravated by service, and/or</li> <li>• aggravated by treatment provided by the Commonwealth.</li> </ul>	
<b>New Zealand</b>	A work-related personal injury is a personal injury that a person suffers — (a) while he or she is at any place for the purposes of his or her employment — s28.	A work-related personal injury is a personal injury that a person suffers — (a) while he or she is at any place for the purposes of his or her employment — s28.

Table 2.4e: Coverage of retirement provisions

Retirement provisions	
<b>New South Wales</b>	Retiring age means the age the person would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the <i>Commonwealth Social Security Act 1991</i> . If injury occurs before retiring age: weekly compensation made until first anniversary of date on which worker reaches retiring age. If the injury occurs on or after retiring age: weekly payments made for the first 12 months of injury. Eligibility for other benefits is ongoing — s52, <i>Workers Compensation Act 1987</i> . Workers receiving compensation benefits under the <i>Workers' Compensation (Dust Diseases) Act 1942</i> are not subject to retirement provisions and may apply for and continue to receive compensation benefits up until their death — s8(3), <i>Workers' Compensation (Dust Diseases) Act 1942</i> .
<b>Victoria</b>	Under s93F, normally, the earlier of age 65 or normal retirement age for the worker's occupation except in the following circumstances: <ul style="list-style-type: none"> <li>• if injured within the period of 130 weeks before attaining retirement age or at any time after attaining that age, the worker is entitled to weekly payments for no more than the first 130 weeks of incapacity for work — s93E, or</li> <li>• if worker's incapacity after reaching retirement age relates to an injury suffered within the preceding 10 years and if the incapacity is due to inpatient treatment, the worker is entitled to weekly payments for a limited period of up to 13 weeks — s93EA.</li> </ul>
<b>Queensland</b>	No retirement provision referred to in the Act.
<b>Western Australia</b>	No retirement provisions in the <i>Workers' compensation and Injury Management Act</i> . Age restrictions were removed on 1 October 2011.
<b>South Australia</b>	If a worker has a work related injury they will be covered for workers compensation regardless of age. A worker who is within two years of retirement age or above retirement age and who is injured at work is entitled to up to two years of income payments, subject to other provisions of <i>the Workers Rehabilitation and Compensation Act 1986</i> . Even after the two years of income maintenance, workers may still be entitled to ongoing medical, hospital, travel and rehabilitation costs and lump sum payments for non-economic loss — s35(2). See the FAQ's on <a href="#">WorkCoverSA's website</a> about compensation for older workers.
<b>Tasmania</b>	If injury occurs on or before 64, compensation ceases at 65. If injury occurs after 64, compensation ceases one year after injury occurs. The Tribunal may allow payments to continue where the worker would have continued to work beyond age 65 — s87.
<b>Northern Territory</b>	Weekly compensation generally stops when the person reaches retirement age under Social Security legislation which is currently 65 years. The retirement age in the legislation has been linked to the retiring age in the <i>Social Security Act</i> , which means it will increase in increments from 2017, reaching 67 years of age in 2024. To provide a better benefit to older workers prior to 2024, the legislation provides for 104 weeks compensation for a person who is 63 or older at the time of injury, capped at age 67 years. Workers aged 66.5 years or older at the time of injury are entitled to 26 weeks weekly compensation. See Bulletin <a href="#">Age Limits for Weekly Payments</a> .
<b>Australian Capital Territory</b>	If the worker was, on the initial incapacity date for the injury, younger than 63 years old, compensation for incapacity is not payable for any period after the worker reaches 65 years of age — s39(3)(b); s40(4)(a). If the worker was, on the initial incapacity date for the injury, at least 63 years of age, compensation for incapacity is not payable for any period more than 2 years after the initial incapacity date — s39(3)(c); s40(4)(b).
<b>C'wealth Comcare</b>	Compensation is not generally payable to an employee who has reached 65, however if an employee who has reached 63 suffers an injury, compensation is payable for a maximum of 104 weeks (whether consecutive or not) during which the employee is incapacitated — s23.
<b>C'wealth Seacare</b>	If an employee suffers an injury before 64, compensation is not payable for the injury after 65. If an employee suffers an injury after 64, compensation is payable for 12 months after date of injury — s38.
<b>C'wealth DVA</b>	Compensation in the form of income replacement is not payable to a person who has reached 65, however if a person who has reached 63 suffers an injury, compensation is payable for a maximum of 104 weeks — MRCA s121.
<b>New Zealand</b>	Not required, except for work-related gradual process, disease, or infection suffered by the person — s20(2)(e).

Table 2.5: Summary of entitlements as at 30 September 2012

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	Australian Government	C'wealth DVA
<b>What pre-injury weekly earning includes</b>										
<b>Overtime</b>	Yes, for seriously injured workers on and from 17 September 2012 (only for the first 52 weeks of weekly payments). <sup>a</sup>	Yes for 52 weeks of weekly payments.	Yes (NWE).	Yes for the first 13 weeks. No from week 14 onward.	Yes	No, with some exceptions (see note). <sup>b</sup>	Yes, if regular.	Yes, if regular (s 25).	Yes	Yes
<b>Bonuses</b>	No	No	Yes	Yes for the first 13 weeks. No from week 14 onward.	Yes	No (s70(2)(ac)).	No	No	No (some allowances are payable).	No (some allowances are payable).
<b>Entitlements expressed as a percentage of pre-injury earnings for award wage earners<sup>c</sup></b>										
<b>0–13 weeks (total incapacity)</b>	100% On and from 17 September 2012 for seriously injured workers: 95%.	95% up to max.	85% of NWE <sup>d</sup> (or 100% under industrial agreement).	100%	100%	100%	100%	100%	100%	100%
<b>14–26 weeks (total incapacity)</b>	100% On and from 17 September 2012 for seriously injured workers: minimum of \$736.72.	80% up to max.	85% of NWE <sup>d</sup> (or 100% under industrial agreement).	100%	90%	100%	100%	100%	100%	100%
<b>27–52 weeks (total incapacity)</b>	The lesser of 90% of AWE or the statutory rate of \$432.50 + additional amount for spouse and/or dependant children spouse: \$114.00, 1 child: \$81.50, 2 children: \$182.20, 3 children: \$301.80, 4 children:	80% up to max.	75% NWE or 70% QOTE. <sup>d</sup>	100%	80%	90%	75–90%	65% or Stat Floor.	27–45 wks 100%. 46–52 wks 75%.	27–45 wks 100%. 46–52 wks 75%.

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	Australian Government	C'wealth DVA
	\$424.60. For each additional dependant child in excess of 4: \$122.50. On and from 17 September 2012 for seriously injured workers: minimum of \$736.72.									
<b>53–104 weeks (total incapacity)</b>	The lesser of 90% of AWE or the statutory rate of \$432.50, + additional amount for spouse and/or dependant child spouse: \$114.00, 1 child: \$81.50, 2 children: \$182.20, 3 children: \$301.80, 4 children: \$424.60. For each additional dependant child in excess of 4: \$122.50. On and from 17 September 2012 for seriously injured workers: minimum of \$736.72.	80% up to max.	75% NWE or 70% QOTE. <sup>d</sup>	100%	80%	53–78 weeks 90%, 79–104 weeks 80%.	75–90%	65% or Stat Floor.	75% If an employee retires or is retired 70% less any employer funded superannuation benefit (weekly equivalent if lump sum is involved) received.	75%



	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	Australian Government	C'wealth DVA
<b>104+ weeks (total incapacity)</b>	The lesser of 90% of AWE or the statutory rate of \$432.50, + additional amount for spouse and/or dependant children spouse: \$114.00, 1 child: \$81.50, 2 children: \$182.20, 3 children: \$301.80, 4 children: \$424.60. For each additional dependant child in excess of 4: \$122.50. On and from 17 September 2012 for seriously injured workers: minimum of \$736.72.	80% (up to max, subject to work capacity test after 130 weeks).	If >15% work-related impairment, 75% NWE or 70% QOTE, otherwise single pension rate. <sup>d</sup>	100%	80% (entitlement after 130 weeks is subject to capacity review.	80%	75–90%	65% or Stat Floor.	75% If an employee retires or is retired 70% less any employer funded superannuation benefit (weekly equivalent if lump sum is involved) received.	75%
<b>Other entitlements</b>										
<b>Permanent impairment</b>	For claims made on and after 19 June 2012: maximum amount payable is \$220 000 (plus additional 5% for back impairment) Note: Pain and suffering lump sum (max of \$50 000) may only be payable to police officers, fire fighters, paramedics, bush fire fighters and emergency services.	\$543 920	\$287 605 permanent impairment + \$325 800 gratuitous care.	\$198 365 + up to \$148 774 in special circumstances. <sup>e</sup>	\$305 759.55	\$289 193	\$278 969.60 permanent impairment.	\$198 783	\$168 605.02 (Economic). \$63 226.92 (non economic loss).	Up to \$410 122.95 (or up to \$309.27pw) + \$79 615.94 for each dependant child if on 80 or more impairment points + \$1592.31 financial advice if on 50 or more impairment points.

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	Australian Government	C'wealth DVA
	volunteers, and workers injured while working in or around a coal mine.									
<b>Limits—medical and hospital</b>	\$50 000 or greater amount prescribed or directed by Workers' Compensation Commission.	52 weeks from cessation of weekly payments. <sup>f</sup>	Medical — no limit. Hospital — 4 days (>4 days if reasonable).	\$59 510 + \$50 000 in special circumstances.	No limit.	No limits, but entitlements cease either after 1 year of weekly benefits cessation or 1 year after claim was made.	No limit.	No limit.	No limit.	No limit.
<b>Death entitlements (all jurisdictions pay funeral expenses to differing amounts)<sup>g</sup></b>	\$481 950 + \$122.50 pw for each dependant child.	\$543 920 (shared) + pre-injury earnings-related pensions to a maximum of \$2000 pw for dependant partner/s and children.	\$538 715 + \$14 395 to dependant spouse + \$28 780 for each dependant family member under 16 or student + \$106.45 pw per child to spouse while children are under 6 yrs + \$133.05 pw per dependant child/family member while children/family members under 16 yrs or a student.	\$271 935 + \$52pw for each dependant child + max of \$59 510 for medical expenses. <sup>e</sup>	\$454 739 + 50% worker's NWE for totally dependant spouse. 25% worker's NWE for totally dependant orphaned child. 12.5% worker's NWE for totally dependant non-orphaned child.	\$305 759.55 + 100% weekly payment 0–26 weeks, 90% weekly payment 27–78 weeks, 80% weekly payment 79–104 weeks + \$110.52 pw for each dependant child.	\$348 712 + \$134.12pw for each dependant child to max of 10 children.	\$207 192 (lump sum) cpi indexed + \$69.06 (cpi indexed) pw for each dependant child.	Comcare — \$475 962.79 + lump sum + \$10 735.29 funeral + \$130.89 pw for each dependant child. Seacare — \$479 634.63 lump sum + \$5838.09 funeral + \$131.90 for each dependant child.	Up to \$659 752.02 (or \$391.80 pw) + \$132 693.24 for "service death" + \$1 592.31 financial advice + (\$79 615.94 + \$90.67 pw) for each dependant child + up to \$79 615.94 for "other dependant".

Entitlements benefits in Western Australia, Victoria, Tasmania, Northern Territory, Australian Capital Territory and New Zealand do not include superannuation contributions. Compensation in the form of superannuation contribution is payable in Victoria after 52 weeks of weekly payments.

- a) In June 2012 changes were introduced to the NSW compensation scheme relating to weekly payments, these changes came into effect on 1 October 2012 for new claims and 1 January 2013 for existing claims.
- b) No, unless overtime was a requirement of the worker's contract of employment, the overtime was worked in accordance with a regular and established pattern and in accordance with a roster, the pattern was substantially uniform as to the number of overtime hours worked and the worker would have continued to work overtime in accordance with the established pattern if the worker had not been incapacitated (s70(2)(ab)).
- c) Payment thresholds and specific benefit arrangements may also apply. The relevant jurisdiction should be contacted directly if further information is required.
- d) NWE — normal weekly earnings (except South Australia where NWE denotes notional weekly earnings), QOTE — Seasonally adjusted amount of Queensland Full-time adult person's ordinary time earnings.
- e) Lump sum shared under statutory formulae between spouse and children. Pension payable to partner for 3 years and to children until age of 16 (or 21 in full-time study).
- f) Except for workers who receive a settlement or award of pecuniary loss damages or a statutory voluntary settlement or whose work or activities of daily living would be adversely affected or surgery is required.
- g) Lump sums maximum and Death entitlements are updated on annual basis and may since have been changed.

**Table 2.6: Prescribed time periods for injury notification**

	Injured worker notifies employer/ insurer of injury	Employer notifies insurer/ authority of injury to worker	Insurer notifies authority of injury to worker	Authority notifies insurer of injury to worker
<b>New South Wales</b>	"...as soon as possible after the injury happens." — 1998 Act, s44(1).	"..within 48 hours after becoming aware that a worker has received a workplace injury..." — 1998 Act, s44(2).	No time specified — 1998 Act, s44(3).	As soon as practicable — 1998 Act, s44(3A).
<b>Victoria</b>	30 days after becoming aware of injury — s102(1). Beyond 30 days after becoming aware of injury in certain conditions — s102(6).	N/A — only obligation to forward claim.	N/A	N/A
<b>Queensland</b>	—	8 business days — s133(3).	N/A	N/A
<b>Western Australia</b>	As soon as practicable — s178(1)(a). Claim within 12 months of injury — s178(1)(b).	5 days after claim is made — s57A(2A).	—	—
<b>South Australia</b>	Within 24 hours or as soon as practicable — s51(2).	5 business days — s51(6).	N/A	N/A
<b>Tasmania</b>	As soon as practicable — s32(1)(a).	3 working days after becoming aware that worker has suffered a workplace injury — s143A.	—	—
<b>Northern Territory</b>	As soon as practicable — s80(1).	s65 of the <i>Workplace Health and Safety Act 2007</i> requires verbal reporting as soon as practicable and written reporting within 48 hours of occurrence.	Copy of claim form supplied to NT WorkSafe within 10 days of insurers initial decision of claim.	N/A
<b>Australian Capital Territory</b>	As soon as possible — s93(1).	48 hrs of becoming aware — s93(2).	N/A	N/A
<b>C'wealth Comcare</b>	As soon as practicable — s53(1)(a).	—	N/A	N/A
<b>C'wealth Seacare</b>	As soon as practicable — s62(1)(a).	—	—	—
<b>C'wealth DVA</b>	N/A	N/A	N/A	N/A
<b>New Zealand</b>	N/A	—	—	—

Note: Throughout this report cells containing only "—" denotes that no information has been supplied.

Table 2.7: Prescribed time periods for claim submission

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
<b>Injured worker puts in claim form</b>	Within 6 months — s65(7) 1998 Act; or Within 3 years — s65(13)(a), 1998 Act Not made within 3 years — s65(13)(b), 1998 Act.	As soon as practicable with injury employer for weekly payments, 2 years for death claims, 6 months after relevant service for claim for medical and like service — s103.	6 months — s131(1). (if beyond 20 days, extent of the insurer's liability to pay compensation is limited to a period starting no earlier than 20 business days before the day on which the valid application is lodged) — s131(2). Beyond 6 months — s131(5).	12 months — s178(1)(b). Beyond 12 months — s178(1)(d).	<6 months — s52(1)(b). >6 months — s52(3)(b). NB: s52(1)(b), prescribed period is 6 months commencing on the day on which the entitlement to make the claim arises.	6 months — s32(1)(b). Beyond 6 months — s38(1).	6 months — s182(1). Beyond 6 months — s182(3).	3 years — s120(1)(b), or Beyond 3 years — s120(2).	No specified time — S54(1).	No time specified — s62(1).	N/A	Within 12 months — s53.
<b>Employer acknowledges receipt of claim</b>	—	As soon as reasonably practicable — s103(4E).	—	—	N/A	—	—	—	—	—	N/A	—
<b>Employer passes on claim form to insurer/authority</b>	Within 7 days of receiving claim or documentation — 1998 Act, s69(1)(a).	Within 10 days after the employer receives the claim — s108(1).	—	5 working days — s57A(2A).	5 Business days — s52(5).	Employer must notify insurer of claim within 3 working days of receiving claim — s36(1AA). Employer must complete employer's report section of claim and forward it to insurer within 5 working days of receiving claim — s36(1).	3 working days — s84(1).	7 days — s126(1).	—	—	N/A	—
<b>Employer/worker supplies further information to insurer on request</b>	7 days — 1998 Act, s69(1)(b).	No time limit except decision must be made on claim for weekly payments or deemed	10 business days of receiving notice — s167(2).	—	N/A	—	—	7 days — s126(2).	28 days — S58(2).	No time specified — s67.	N/A	—

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
		accepted.										
<b>Insurer passes on claim form to authority</b>	—	Not required as authorised agent of authority has claims management function.	—	Within 21 days after payments commence — s57C(2).	N/A	5 working days — s36(2).	10 working days — s84(2).	N/A	N/A	—	N/A	—
<b>Claim deemed accepted</b>	Decide provisional liability within 7 days after notification of injury for up to 12 weeks of weekly payments and/or medical costs up to \$7500 — s275 and s280, 1998 Act.  Make a decision about ongoing liability of the claim with 21 days of the claim for weekly payments and/or medical expenses — 1998 Act, s274(1) and s279(1).	28 days for weekly payments if received by insurer within 10 days or 39 days in other circumstances — s109.	No statute for deemed acceptance or rejection, however claims must be determined within 20 business days — s134(2) where practical.	—	10 Business days — s53(4) (wherever practicable).	84 days — s81AB, s81A(1).	10 working days after receipt by employer if no decision has been made — s85(1) and s87.	28 days — s128(1).	—	Under the <i>Seafarers Act</i> , claims are deemed to be rejected if not determined within the following statutory time frames: 60 days for death claims (s72), 12 days for incapacity, loss of property and medical expenses (s73), 30 days for permanent impairment (s73A).	N/A	—

Table 2.8: Prescribed time periods for payments

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
<b>Eligibility from</b>	Periods of either total or partial incapacity for work resulting from the injury — s33 1987 Act.	Date of incapacity for work for weekly payments — s93.	Assessment by medical practitioner, nurse practitioner or dentist — s141(1).	From date of incapacity — s21 (weekly benefits). From date of injury — s18 (medical expenses).	From date of incapacity — s35(8).	Date of injury (for medical etc expenses). Date of incapacity for weekly payments — s81(3)(a).	—	Date of injury — s38(1)(b).	For injuries — date of injury — for diseases the date employee first sought medical treatment, date of death or date of first incapacity or impairment — s7(4).	Date of incapacity — s31.	Date of incapacity — Chapter 4, Parts 3 and 4.	Date of incapacity — Schedule 1, Part 2, cl 32.
<b>Payments begin</b>	Within 7 days of notification if provisional liability — 1998 Act, s267(1). Promptly when liability accepted by insurer — 1998 Act, s74A(1). 21 days of claim lodged and liability accepted — s274(1).	Max 7 days after end of week in which payments are due — s114D(6).	Day of assessment — s141(1). Day after assessment day — s141(2).	Not later than 14 days — s57A(7).	Within 7 days of notification if provisional liability accepted unless a reasonable excuse exists — s50B(1).  Within 14 days of claim — s46(6).	On first pay day following receipt of claim. If the first pay day is within 14 days of receipt of claim and it is not reasonably practicable to make payment on that day, payment must begin not less than 14 days from receipt of claim — s81(1).	3 working days from accepting liability — S85(2).	From notification of injury — s38(1)(a).	No time specified.	Within 30 days of date of determination of amount for injuries resulting in death or permanent impairment— s130.	No time specified.	—
<b>Employer passes on payments to injured worker</b>	As soon as practicable — 1998 Act, s69(1)(c).	Max 7 days after end of week in which payments are due — s114D(6).	Excess to be paid within 10 business days after receiving notice from WorkCover's s66(5).	—	Payment to be made in next pay period (Para 2 in <a href="#">Provisional Payment Guidelines</a> ) — s50B(2). Within 14 days after date of claim — s46(6).	—	3 working days from accepting liability — S85(2).	Immediately — s126(3).	No time specified.	No time specified.	No time specified.	—
<b>Medical invoices sent to insurer</b>	No time specified.	No time limit specified.	2 months — s213(2).	No time specified.	No time specified.	Within 7 days of employer receiving account —	No time specified.	Not specified.	No time specified.	No time specified.	No time specified.	—

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
						s76A(2).						
<b>Medical expenses accepted</b>	Within 7 days of notification if provisional liability accepted — s267. 21 days of claim lodged — 1998 Act, s279(1).	Claim for compens'n to be accepted with 28 days — s109(2).	—	—	No timeframe specified under s32.	—	No time specified.	Not specified.	No time specified.	No time specified.	No time specified.	—
<b>Medical expenses paid</b>	No time specified.	No time specified.	No time specified — s210.	No time specified.	No timeframe specified under s32.	28 days — s77AA(1) and s77AB(2).	No time specified — s73.	30 days of insurer receiving notice — s90(1).	No time specified.	No time specified.	No time specified.	—

Table 2.9: Dispute resolution process

Dispute resolution provisions	
<b>New South Wales</b>	<p>If liability for a claim or a request for a benefit is declined, the injured workers will receive a copy of all information relevant to the decision. This means that all information is exchanged and considered before an application for dispute resolution is lodged with the Workers Compensation Commission (the Commission). An injured worker can ask the insurer to review the decision and can seek advice from WorkCover's Claims Assistance Service, which provides access to information and assistance for injured workers and employers regarding claims and disputes.</p> <p>If the dispute is about the level of permanent impairment, the Commission-approved medical specialist will review all medical evidence, assess the worker, and make a final determination on the level of permanent impairment for a lump sum compensation payment.</p> <p>The Commission is an independent Statutory Tribunal, which deals with disputed workers' compensation claims (except for coal miners). Any party to a workers' compensation dispute can lodge an application to the Commission, except for disputes about permanent impairment, which can only be lodged by a worker.</p> <p>Appeal provisions exist in relation to decisions of arbitrators and Approved Medical Specialists (AMS) under limited grounds. Appeals against the decision of an arbitrator are determined by a Presidential member. Appeals against the assessment of AMS are determined by an Appeal Panel comprising of 2 AMS and 1 arbitrator.</p> <p><b>Medical Panels:</b> AMS are appointed to assess medical disputes.</p> <p>The District Court has exclusive jurisdiction to examine, hear and determine all coal miner matters (except matters arising under Part 5 of the 1987 Act).</p> <p><b>Dust Diseases</b></p> <p>Workers who disagree with a decision made by the Dust Diseases Board or its Medical Authority can lodge an appeal in the District Court of NSW in accordance with s8I of the <i>Workers' Compensation (Dust Diseases) Act 1942</i>.</p>
<b>Victoria</b>	<p>Court proceedings must not be commenced (except in the case of a fatality or lump sum claims under the old Table of Maims) unless the dispute has been referred for conciliation and the conciliation officer certifies that the worker has taken all reasonable steps to settle the dispute — s49.</p> <p><b>Conciliation:</b> The worker or person making the claim may refer the dispute for conciliation to attempt to resolve the dispute — s53 and s55.</p> <p>If the dispute is resolved by agreement, a conciliation officer will issue a certificate outlining the agreement. Failing agreement, a conciliation officer may give directions, make recommendations or decline to give directions or recommendations or refer a medical question to the Medical Panel — s56 and s57.</p> <p>A direction of a conciliation officer is binding on the parties unless subsequently revoked by that conciliation officer or any other Conciliation Officer or a Court — s60.</p> <p>Where a claimant has taken all reasonable steps to attempt settlement of the dispute but agreement cannot be reached, a conciliation officer will issue a certificate permitting the claimant to commence court proceedings — s49.</p> <p>Unless a Court orders otherwise, a dispute can be conciliated notwithstanding that court proceedings have been commenced — s57.</p> <p>The Magistrates' Court deals with claims up to \$100 000, disputes regarding access to claims documents, claims for reimbursement of expenses incurred by non-family members of a deceased worker and civil proceedings relating to discriminatory conduct against a worker — s43 and s242AD. The County Court deals with all other claims — s43.</p> <p><b>Medical Panels:</b> 'medical questions' as defined in s5(1) may be referred to the Medical Panels. Disputed impairment benefits assessments under s104B and any medical question arising in a conciliation dispute relating to a worker's entitlement to weekly payments for reduced work capacity after 130 weeks under s93CD must be referred to Medical Panels. Medical Panels must form binding opinions on medical questions referred — s68.</p>
<b>Queensland</b>	<p><b>Internal Review by Insurer:</b> Insurer must undertake an internal review of proposed decision to reject the application for compensation or to terminate compensation. The review is to be undertaken by a person in a more senior position than the person who proposes to make the decision — s538. Reviewable decisions are outlined in s540.</p> <p><b>Review by Q-COMP:</b> Q-COMP is to hear from both parties and review all relevant information and documentation. Once Q-COMP has reviewed the decision, they can confirm or vary the decision, set aside the decision and substitute another decision, or set aside the decision and return the matter to the decision maker with the directions Q-COMP considers appropriate — s545.</p> <p><b>Appeal to Industrial Magistrate (premium matters) or Industrial Relations Commission (claim matters):</b> Formal hearing of both sides, where the appeal body can confirm, vary, set aside and substitute another decision, or set aside the decision and return the matter to the decision maker with directions considered appropriate — s558.</p> <p><b>Appeal to Industrial Court:</b> Court rehears evidence and proceedings and additional evidence if ordered by the Court. The Court's decision is final — s561 and s562.</p> <p><b>Medical Panel:</b> Referral to Medical Assessment Tribunal (MAT) by an insurer to decide a worker's capacity for work or permanent impairment — s500. No appeal against a decision by MAT unless fresh medical evidence is submitted to MAT within 12 months of the MAT decision — s512.</p>
<b>Western Australia</b>	<p><b>Conciliation:</b> An application for conciliation can only be made after a claim for workers' compensation has been made on an employer. Before making a conciliation application the applicant must have made reasonable attempts to resolve the dispute by negotiation with the other party.</p> <p>After an application has been accepted, the Conciliation Service may contact the parties to clarify and discuss the matters. Many disputes are resolved quickly and informally at</p>



## Dispute resolution provisions

	<p>this stage. If needed, a conciliation meeting is usually scheduled within 21 days from acceptance of the application, at the WorkCover WA offices.</p> <p>When the conciliation process is concluded, the result is recorded in a Certificate of Outcome, which is provided to the parties in dispute by the Conciliation Service. It outlines:</p> <ul style="list-style-type: none"> <li>• the matters in dispute at the outset of the process</li> <li>• those matters that were resolved and the basis on which they were resolved</li> <li>• those matters remaining in dispute, and</li> <li>• details of any payment directions issued.</li> </ul> <p>In the event that a party does not comply with the monetary terms of the agreement, the Certificate of Outcome may be enforced through court proceedings.</p> <p><b>Arbitration:</b> Before an arbitration application can be made, the dispute must have been conciliated by the Conciliation Service or a certificate issued by the Director of Conciliation advising the matter is not suitable for conciliation.</p> <p>An Arbitrator makes his or her determination based on evidence. Witnesses may be sworn in and crossexamined to give verbal evidence. Parties may be required to attend a directions hearing to clarify matters and address preliminary matters and this will be followed by a recorded arbitration hearing where the Arbitrator considers all available evidence and hears from each party before making a formal determination.</p> <p>A determination by an Arbitrator is legally binding but questions of law may be appealed to the District Court of Western Australia, providing certain thresholds are met.</p> <p><b>Medical Assessment Panels:</b> Where the dispute is of a medical nature, the Conciliation officer or Arbitrator may refer the matter to a medical assessment panel, made up of medical practitioners. For example, questions may be referred to a panel if there is a conflict of opinion between the worker's and employer's medical practitioners, about the nature or extent of an injury or a worker's capacity for work. The panel may require the worker to attend a medical examination. The determination of the panel is final and binding on all parties and on any court or tribunal.</p> <p><b>Legal representation and other assistance:</b> Parties in a dispute may have legal representation, but this is not compulsory. If a worker is not represented, a Conciliation officer or an Arbitrator can refuse permission for an employer or insurer to be represented by a legal practitioner or registered agent.</p> <p>Registered agents regulated by WorkCover WA can represent parties at proceedings. In certain circumstances the Conciliation officer or Arbitrator may appoint a guardian, allow an interpreter to assist in proceedings or allow a family member or friend to support the injured worker during the dispute resolution process.</p> <p>Under the <i>Workers' Compensation and Injury Management Act 1981</i>, maximum costs are set for legal, registered agent and related services. The costs scale is structured to promote the early settlement of disputes by agreement.</p> <p><b>Further information:</b></p> <p><a href="#">'What happens if there is a dispute?'</a></p> <p><a href="#">Conciliation Rules and Forms</a></p> <p><a href="#">Arbitration Rules and Forms.</a></p>
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### South Australia

	<p><b>Reconsideration:</b> Disputed claim determinations on a claim must be reviewed and reconsidered by a person who did not make the disputed decision. The reconsideration of the disputed decision must be completed within 7 days after receiving notice of the dispute — s91.</p> <p><b>Conciliation:</b> If a dispute is not resolved through the reconsideration process it must be referred for conciliation — s91A.</p> <p>A conciliation officer must seek to identify issues in the dispute and explore the possibilities of resolving the dispute by the agreement of all parties — s92A.</p> <p><b>Judicial Determination:</b> A hearing before a presidential member of the Tribunal — s94A.</p> <p><b>Full Bench:</b> The President can refer a dispute to the Full Bench of the Tribunal — s94A. An appeal lies on a question of law from a judicial determination to the Full Bench of the Tribunal — s86.</p> <p><b>Supreme Court:</b> The Full Bench of the Tribunal may refer a question of law for the opinion of the Full Court of the Supreme Court — s86A(1).</p> <p>An appeal lies on a question of law against a decision of the Full Bench of the Tribunal to the Full Court of the Supreme Court but such an appeal can only be commenced with the permission of a Judge of the Supreme Court — s86A(2) and (2a).</p> <p>A compensating authority or the Tribunal may require a worker who claims compensation under the Act or who is in receipt of weekly payments to submit to an examination by a Medical Panel or to answer questions (or both) on a date and at a place arranged by the Convenor of Medical Panels so that the Medical Panel can determine any specified medical question — s98F(2). That power may be exercised by a compensating authority both before and after the matter has been referred into the Tribunal for judicial determination — <i>Campbell v Employers Mutual Ltd</i>; <i>Yaghoubi v Employers Mutual Ltd</i> [2011] SASCFC 58. Medical questions are defined in s98E.</p> <p>The opinion of a Medical Panel on a medical question is final and binding on the parties, subject to the opinion not being based on an error of fact or law, but is not binding on the Tribunal. It remains for the Tribunal to determine what weight is given to an opinion. The Tribunal should satisfy itself that the opinion of the panel is based on evidence and made within its expertise — s98H(4) and <i>Campbell v Employers Mutual Ltd</i>; <i>Yaghoubi v Employers Mutual Ltd</i> [2011] SASCFC 58.</p>
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## Dispute resolution provisions

<b>Tasmania</b>	<p><b>Conciliation: 2 steps:</b> Preliminary stage is to identify issues being disputed and to try and resolve the dispute amicably — s42D. The next stage is a conciliation conference which provides an opportunity for open and ‘without prejudice’ discussions based on all available information to facilitate a resolution — s42E to s42M.</p> <p><b>Arbitration:</b> Formal hearing held in private, where both parties give evidence. Orders made by the Tribunal are final and binding — s44 to s49.</p> <p><b>Appeal to Supreme Court:</b> Can only appeal on points of law — s63.</p> <p><b>Medical Panel:</b> The Tribunal may refer a medical question to a medical panel when there is conflicting medical opinion, and one of the parties wishes to continue with proceedings. The determination of the medical panel is binding on the Tribunal — s49.</p>
<b>Northern Territory</b>	<p><b>Mediation:</b> To try and resolve disputes by having discussions with each party and through conference with parties. The mediator may make recommendation to parties in relation to resolution of dispute — s103B to s103E.</p> <p><b>Work Health Court:</b> Hear and determine claims for compensation and all matters and questions incidental to or arising out of such claims — s93 to s110B.</p> <p><b>Supreme Court:</b> Points of law only can be referred to the Supreme Court — s115 and s116.</p> <p>NB: Claimant is not entitled to commence court proceedings unless an attempt at resolution had been made through mediation — s103J(1).</p>
<b>Australian Capital Territory</b>	<p><b>Conciliation:</b> Parties must make a genuine effort to reach an agreement. Conciliation must occur before arbitration unless there is an issue with the insurer rejecting a claim for compensation.</p> <p>The conciliation officer may decide claim for compensation is not suitable for conciliation or the issue is unresolved and may make a recommendation. If parties agree, the record of agreement must be in writing — Part 6, Regulations.</p> <p><b>Arbitration:</b> If conciliation is unsuccessful or compensation claim has been rejected by the insurer, the matter must be decided by the Committee unless the Committee refers the matter to the Magistrates Court — Part 7, Regulations.</p> <p><b>Magistrates Court:</b> Appeals or referrals by the Committee — Part 7, Regulations.</p> <p><b>Medical Referees:</b> Medical referees may be requested throughout the resolution process to prepare a report to help parties reach an agreement — Part 7, Regulations.</p>
<b>C’wealth Comcare</b>	<p>Following an internal reconsideration process (s62), by an independent review officer (or by a delegate not involved in the initial decision), if either party (employee or Commonwealth entity or authority) to a reconsidered decision is not satisfied with that decision an application to the Administrative Appeals Tribunal (AAT) may be made (a dispute). The AAT processes include compulsory conciliation. The AAT has the discretion to make or decline to make a decision in the terms agreed to by the parties. The AAT must be satisfied that a decision in those terms or consistent with those terms would be within the powers of the Tribunal. The AAT can also make determinative decisions — s64.</p> <p><b>Appeals:</b> A party may apply from the AAT to the Federal Court on questions of law.</p>
<b>C’wealth Seacare</b>	<p>Following a reconsideration process which must involve the assistance of an industry panel, or Comcare officer, if the employee is not satisfied with that decision an application to the Administrative Appeals Tribunal (AAT) may be made (a dispute) — s88 to s91.</p> <p><b>Appeals:</b> A party may apply from the AAT to the Federal Court on questions of law.</p>
<b>C’wealth DVA</b>	<p>Following an internal reconsideration process (s350) or review by the Veterans’ Review Board (s353), if either party (claimant, service chief or MRCC) to a “reviewable determination” is not satisfied with that decision an application to the AAT may be made.</p>
<b>New Zealand</b>	<p>An employer may apply to the Corporation for a review of its decision that a claimant’s injury is a work-related personal injury suffered during employment with that employer.</p> <p>A claimant may apply to the Corporation for a review of:</p> <ol style="list-style-type: none"> <li>a) any of its decisions on the claim</li> <li>b) any delay in processing the claim for entitlement that the claimant believes is an unreasonable delay, or</li> <li>c) any of its decisions under the Code on a complaint.</li> </ol> <p>Levy payers can also ask for a review of any levy paid or payable.</p> <p>Reviews are conducted by an independent reviewer. A review decision can be appealed to the District Court.</p> <p>Appeals on questions of law can be taken to the High Court and the Court of Appeal.</p>

**Table 2.10: Definition of remuneration for the purpose of premium calculation**

Definition of remuneration	
<b>New South Wales</b>	Total gross earnings (before tax), bonuses, commissions, payments to working directors, fringe benefits, superannuation, trust distributions where in lieu of wages and some other payments as outlined in the <a href="#">Wages Definition Manual</a> .
<b>Victoria</b>	Gross wages, salaries (including overtime and loadings), bonuses, commission, fringe benefits and superannuation. The Remuneration Checklist found in <a href="#">A guide for employers — Your WorkSafe Insurance</a> " <a href="#">Determining your remuneration</a> " also provides an overview of what is considered to be remuneration for the purposes of calculating an employer's premium.
<b>Queensland</b>	Total gross wages, salaries, superannuation contributions and other payments as outlined in the <a href="#">Wages Definition Manual</a> .
<b>Western Australia</b>	All gross wages, salaries, commissions, bonuses, overtime, allowances and the like, directors fees, superannuation contributions (except those made by force of law), and all other benefits 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. 'Wages' does not include termination payments, retirement pay, retrenchment pay in lieu of notice, pensions, golden handshakes, or weekly payments of workers' compensation. <a href="#">Workers' Compensation: A Guide for Employers</a> .
<b>South Australia</b>	s65 of the <i>Workers Rehabilitation and Compensation Act 1986</i> provides for WorkCover to determine what remuneration is for premium calculation purposes. The WorkCover Board published this definition in the South Australian Government Gazette on 10 May 2012. The general basis for the definition is payments made to or for the benefit of a worker (quantified in monetary terms). The WorkCoverSA <a href="#">Guide to remuneration 2012–13</a> summarises the Gazette publication and identifies what is included as remuneration. 'Premium Information booklet' is a further guide available on the <a href="#">WorkCoverSA website</a> that may be found under 'P' within 'Documents A—Z'.
<b>Tasmania</b>	Wages are used for defining premiums. Wages include the monetary value of all payments made to a worker, whether in cash or in kind, in return for the worker's labour. Wages are defined in the Guideline on the Definition of Wages, and s96A of the Act. <a href="#">Guideline on the Definition of Wages (GB118)</a>
<b>Northern Territory</b>	Not in legislation but guidance material suggests Wages, Salaries and Remuneration includes: Wages, salary, overtime, shift and other allowances, over-award payments, bonuses, commissions, payments for public and annual holidays (including loadings), payments for sick leave, payments for long service leave (including a lump sum payment instead of long service leave) and including but not limited to: <ul style="list-style-type: none"> <li>• the market value of meals, accommodation and electricity provided by the employer for the worker</li> <li>• the total value of any salary sacrificed amounts, for example motor vehicles (including fringe benefits applicable to these salary sacrifices), and</li> <li>• superannuation contributions that would be payable to a worker as wages or salary if the worker so elected (e.g. salary sacrificed superannuation).</li> </ul>
<b>Australian Capital Territory</b>	Wages including salary, overtime, shift and other allowances, over award payments, bonuses, commissions and any other payments/sums that the employer has been accustomed to pay to the worker — as defined in the <a href="#">ACT Wages and Earnings Guide</a> .
<b>C'wealth Comcare</b>	Gross wages/salaries including overtime that is regular and required (also including condition of service payments normally covered by sick leave, holidays, long service leave) and generally any taxable allowances. Excludes employer superannuation contributions, one off payments and bonuses — generally, non-taxable allowances.
<b>C'wealth Seacare</b>	Not defined, but generally taken to be gross wages, salaries and all other remuneration including pay in respect of holidays, sick leave and long service leave.
<b>C'wealth DVA</b>	N/A
<b>New Zealand</b>	Earnings as an employee mean all gross source deduction payments (i.e. taxable wages) but does not include social security benefit, student allowance, redundancy payment, retiring allowance or superannuation scheme pension. Earnings as a self-employed person is defined as their annual assessable income, after expenses are deducted, that results from personal exertions. This definition includes Private Domestic Workers. Earnings as a shareholder-employee are any earnings as an employee, and/or any further salary representing payment for services provided as an employee or director of the company.

Table 2.11: Employer excess

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
<b>Excess</b>	Yes — s160 (1987 Act) and Insurance Premiums Order.	Yes — s125A(3).	Yes — s65.	No	Yes — s46 and s33.	Yes — s97(1A).	Yes — s56.	Employers are liable for weekly compensation payments from date of injury until the insurer is notified of the injury — s95 <i>WC Act 1951</i> .	No	Not prescribed under legislation but may be negotiated between employer and insurer.	N/A	Yes — s98.
<b>Period of incapacity</b>	One week's weekly compensation up to a maximum indexed amount.	First 10 days.	The lesser of: <ul style="list-style-type: none"> <li>• 100% of Qld full-time adult's ordinary time earnings (QOTE), or</li> <li>• the injured worker's weekly compensation rate.</li> </ul> QOTE is currently \$1 330.50 from 1 July 2012.	—	First two weeks of the period of incapacity per worker per calendar year.	First weekly payment. May be extended up to first 4 weekly payments.	First day.	As above.	Any part day lost on day of injury.	—	N/A	First week.
<b>Cost of benefits</b>	—	First \$629 of medical costs.	\$1330.50 (max).	—	—	First \$200 of other benefits.	—	As above.	N/A	—	N/A	—
<b>Buyout option</b>	Excess is waived if the claim is reported to a Scheme Agent within 5 days of the employer becoming aware of the injury.	Yes — 10% of premium.	No	—	Excess is waived if the Corporation is satisfied that the employer has complied with s52(5) of the <i>WRandC Act 1986</i> i.e. employer has within 5 business days after receipt of a claim forwarded the claim to the Corporation or its agent.	Yes — subject to the approval of the WorkCover Tasmania Board — s97(1C).	—	As above.	N/A	—	N/A	—

**Table 2.12: Uninsured employer provisions**

Uninsured Employers	
<b>New South Wales</b>	A claim may be made against the Nominal Insurer by any person having a workers' compensation claim if the employer is uninsured or unable to be identified by the worker — 1987 Act, s140. The employer is required to repay the amount spent on the claim and legal expenses (1987 Act, s145), plus penalties incurred for not maintaining a workers' compensation insurance policy.
<b>Victoria</b>	As at 1 July 2010, an employer who is required to obtain a policy of insurance but does not do so, is deemed to have in force a policy of insurance for the policy period for the purposes of the <i>Accident Compensation (WorkCover Insurance) Act 1993</i> (s7). An employer who is deemed to have in force a policy of insurance is liable to pay premium for the period of non-compliance in accordance with the relevant Premiums Order and a default penalty of an amount equal to the premium payable. WorkSafe may remit the whole or any part of the default penalty (s7).
<b>Queensland</b>	WorkCover may recover from the employer the amount of the payment made to an injured worker together with a penalty equal to 50% of the payment, as well as the amount of unpaid premium together with a penalty equal to 100% of the unpaid premium — s57.
<b>Western Australia</b>	Where an employer is not insured against their liability to pay compensation or damages to an injured worker, WorkCover WA will pay an amount to satisfy the award or any award for costs made from the General Account (uninsured fund) — s174. Where an employer is uninsured, that employer will be directly liable for the cost of the benefits paid under the <i>Workers' Compensation and Injury Management Act</i> Costs could include: <ul style="list-style-type: none"> <li>• statutory benefits</li> <li>• legal costs involved in court action</li> <li>• liability for the cost of any action taken at common law</li> <li>• fines of up to \$5000 per worker</li> <li>• an amount equal to any avoided premiums going back five years, and</li> <li>• separate and further offences for every week remaining uninsured after the date of conviction.</li> </ul> s170, s174AA.
<b>South Australia</b>	An employer must not employ workers to whom the Act applies if the employer is not registered with WorkCover — s59. Where an employer fails to make a payment of compensation that the employer is liable to make under the Act (e.g., first two weeks income maintenance), WorkCover shall make that payment of compensation and recover from the employer as a debt the amount payable and an administrative fee fixed in accordance with the regulations, and WorkCover shall take all reasonable steps to recover the debt — s48 and reg 43.
<b>Tasmania</b>	The Nominal Insurer is an independent statutory body established to ensure that injured workers are not disadvantaged in circumstances where: the employer is not insured; the employer has left the State and its whereabouts are unknown; the employer or licensed insurer has become insolvent; for any other reasons, there are reasonable grounds for believing that the employer or licensed insurer is, or is likely to be, unable to discharge in full any liability under the Act — s121 and s126. The Workers Rehabilitation and Compensation Tribunal can order the Nominal Insurer to meet the employer's liability for the claim — s127. The Nominal Insurer will then attempt to recover the amount paid in relation to the claim from the employer or insurers involved — s130. An uninsured employer may be prosecuted and, if convicted, may be ordered to pay avoided premiums in addition to any fine the court may impose — s97(10).
<b>Northern Territory</b>	The Nominal Insurer Fund is established by the Minister and administered by the Nominal Insurer — s162. Where an employer is not covered in full by a policy of insurance or indemnity obtained in accordance with the Act, and has accepted, been deemed to have accepted or is otherwise ordered by the Court to pay compensation, and the employer defaults in their obligation to pay compensation, the worker can make a claim on the Nominal Insurer — s167. Employer shall pay any amount required under the Act (including costs incurred or monies expended in the conduct of the claim) and pay an amount equal to the highest premium payment for the period there was no cover, to the Nominal Insurer — s172(3).

## Uninsured Employers

<b>Australian Capital Territory</b>	<p>The Default Insurance Fund (DI Fund) provides a safety net to meet the costs of workers' compensation claims where an employer did not have an insurance policy or an approved insurer is wound up or cannot provide the indemnity required to be provided under a policy — s166A.</p> <p>If an employer fails to maintain a compulsory insurance policy, the DI fund manager may recover the double recovery amount as a debt owing by the employer to the DI fund. However, the employer is not liable under ss(1) for a failure to maintain a compulsory insurance policy in relation to a worker if: a) the employer believed, on reasonable grounds, that a State was the Territory or State of connection for the employment under the law of a State corresponding to part 4.2A (Employment connection with ACT or State), and b) the employer had insurance, or was registered, as required under a law of the State in relation to liability for workers' compensation under the law of the State — s149.</p>
<b>C'wealth Comcare</b>	<p>Not necessary within the 'premium' (Commonwealth and ACT Public Sector) component of the scheme as all employees are 'Government' employees or members of the ADF. The Commonwealth could be considered to be the nominal insurer through the Department of Finance and Administration for injuries incurred before 1 July 1989. Liabilities of the Commonwealth (but not self insured licensees) which were incurred before this date are not funded through the Comcare premium scheme. This arrangement continues for claims determined under the MRCA by the DVA. In the self insured (licensee) component of the scheme, prudential arrangements including the requirement for a guarantee held by the SRC Commission ensures that any under insurance or non payment of liabilities is provided for.</p>
<b>C'wealth Seacare</b>	<p>Not prescribed under legislation but may be negotiated between employer and insurer.</p>
<b>C'wealth DVA</b>	<p>N/A</p>
<b>New Zealand</b>	<p>An employer must pay, in accordance with the Act and regulations made under the Act, levies to fund the Work Account.</p> <p>The Scheme covers all workers regardless of whether their employer has breached the Act by failing to pay levies.</p>

Table 2.13: Leave while on workers' compensation

Leave accrual while on workers' compensation	
<b>New South Wales</b>	s49 of the <i>Workers Compensation Act 1987</i> states 'Compensation is payable under this Division to a worker in respect of any period of incapacity for work even though the worker has received or is entitled to receive in respect of the period any payment, allowance or benefit for holidays, annual holidays or long service leave under any Act (Commonwealth or State), award or industrial agreement under any such Act or contract of employment'. s49 does not expressly permit the accrual of leave. Rather, it permits the payment of weekly workers compensation benefits if a worker is on paid leave.
<b>Victoria</b>	In Victoria, leave provisions are not covered under workers' compensation legislation. WorkSafe Victoria does not advise employers whether a worker is entitled to the payment or accrual of leave and refers employers and workers to the appropriate employment agreement and/or the <i>Fair Work Act 2009</i> (Cth). Where weekly payments are paid or payable, regard shall not be had to any sum paid or payable in lieu of accrued annual leave or long service leave — s97(1)(d).
<b>Queensland</b>	A worker is entitled to take or accrue annual leave, sick leave and long service leave under an Industrial Act or industrial instrument while they are entitled to and receiving workers' compensation payments — s119A.
<b>Western Australia</b>	Compensation is payable to a worker in respect of any period of incapacity notwithstanding that the worker has received or is entitled to receive in respect of any such period any payment, allowance, or benefit for annual leave, or long service leave — s80(1). Any sick leave payments made in lieu of workers' compensation payments must be repaid to the employer and the sick leave entitlement reinstated for the relevant period — s80(2). There is no provision in the Act that permits the accrual of leave while receiving weekly payments of compensation for any period of incapacity.
<b>South Australia</b>	In South Australia, a worker receiving weekly payments for their compensable injury may continue to accrue annual leave entitlements depending on the terms of the relevant award, industrial agreement etc. If a worker is entitled to accrue annual leave but has received weekly payments for total incapacity for a period of 52 weeks or more (continuous or separate periods) the worker's entitlement to annual leave is considered to be satisfied in respect of a year of employment that coincides with, or ends during that period. If the worker is not entitled to continue to accrue annual leave, the worker may be entitled, by way of compensation, to the monetary value of the annual leave that would have accrued if the worker had not been absent from employment — s40.
<b>Tasmania</b>	When compensation is payable and the worker would be entitled to be absent from his/her employment on annual recreational leave or long service leave: (a) the worker must be given a similar period of leave on pay in lieu of that annual recreational leave or long service leave within 3 months from the date of their return to work or at the termination of their right to compensation if they do not then return to work, or (b) if the worker so desires, he/she may by arrangement with the employer, take the leave during the period of incapacity for which compensation is payable (the worker is then not entitled to receive weekly payments during that period of annual recreational leave or long service leave.) An employer must not attempt to cause or require a worker to take annual recreational leave or long service leave during a period of incapacity for which compensation is payable — s84. A worker is entitled to be recredited with annual recreational leave or long service leave taken whilst his/her entitlement to workers compensation is pending — s84B. Tasmania's workers' compensation legislation does not deal with accrual of annual or long service leave. Workplace Standards Tasmania advise that it is an industrial relations matter and unless an award or agreement stipulates that annual leave or long service ceases to accrue after a certain period of absence it will continue to accrue.
<b>Northern Territory</b>	The <i>Workers Rehabilitation and Compensation Act</i> does not expressly permit the taking or accruing of leave and therefore s130 of the <i>Fair Work Act</i> applies.
<b>Australian Capital Territory</b>	Workers Compensation Act (s46) does not affect an entitlement to annual or long service leave accrual that arises apart from the Act. An employee's entitlement to accrue long service leave/annual leave would be covered under their award or agreement or in some cases under the <i>Fair Work Act 2009</i> , specifically under the National Employment Standards. These are administered by the Fair Work Ombudsman and therefore enquiries of this nature would be usually directed to them. In the case of a construction worker or cleaner they may be directed to the ACT Long Service Leave Authority. If an employee was covered by the <i>Long Service Leave Act 1976</i> , the Act stipulates that whilst off work on workers' compensation people do not accrue long service leave, however the employee's continuity would not be broken.
<b>C'wealth Comcare</b>	An injured employee cannot take leave other than maternity leave while they are on compensation leave — s116. Annual leave and sick leave accrue during the first 45 weeks of incapacity, and proportionately to hours worked beyond 45 weeks of incapacity — s116. Long service leave accrues throughout compensation leave — s116.
<b>C'wealth Seacare</b>	An injured employee cannot take leave other than maternity leave while they are on compensation leave — s137. Long service leave entitlements continue to accrue in accordance with the applicable industrial instrument or National Employment Standard — s137.
<b>C'wealth DVA</b>	If incapacity payments would have continued were it not for the pregnancy/maternity leave then they should still continue during the period that is generally considered to be the period of 'confinement' i.e. six weeks either side of the expected/actual birth date. Compensation is not payable for annual leave not accrued while the person is incapacitated.
<b>New Zealand</b>	Leave provisions are not covered under accident compensation legislation. Annual leave continues to accrue if an employee is receiving accident compensation — <i>Holidays Act 2003</i> (administered by Department of Labour).

### Effect of taking leave while on compensation

<b>New South Wales</b>	s49 of the 1987 Act does not expressly permit the taking of leave. Rather, it permits the payment of weekly workers compensation benefits if a worker is on paid leave. s49 of the <a href="#">Workers Compensation Act 1987 No 70 (NSW)</a> — Historical version for 1 August 2012 to 30 September 2012.
<b>Victoria</b>	If the current weekly earnings of a worker are reduced because the worker is on paid annual leave or long service leave, the Authority or self-insurer must not, by reason only of that reduction, alter the amount of compensation in the form of weekly payments — s114 (2D).
<b>Queensland</b>	If a worker requests to take annual or long service leave and the employer approves this request, WorkCover continues to pay weekly benefits for the duration of the leave.
<b>Western Australia</b>	Leave payments do not affect a worker's compensation entitlements in any way. Any leave entitlements taken by the worker will be credited back if the worker's claim is accepted — s80 (1–3).
<b>South Australia</b>	s35A(4)(a) and S35A(6)) of the SA Workers Rehabilitation and Compensation Act 1986. s35A(4)(a) — For the purposes of this section, but subject to ss(5), the designated weekly earnings of a worker will be taken to be: a) the current weekly earnings of the worker in employment or self-employment, or b) which ever is the greater, but not to include a prescribed benefit under ss(6). s35A(6) — The following are prescribed benefits for the purposes of ss(4): (b) any of the following received by the worker from an employer: (i) any payment, allowance or benefit related to annual or other leave. Refer to Chapter 9 of the Claims Operational Guidelines, section titled section Weekly payment reimbursement requests.
<b>Tasmania</b>	s84 inserted by 16 of 1995 and subsequently amended by 8 of 2007 to include long service leave. If a worker is entitled to a period of annual leave or long service leave during a period of entitlement to compensation under the Act, the worker must be given a similar period of leave at some time within 3 months of returning to work (or at termination of the right to compensation if there is no return to work). The worker can arrange with his or her employer to take annual leave or long service leave during a period that he/she would be entitled to workers compensation, but would not be entitled to receive weekly payments during that leave. An employer must not attempt to cause or require a worker to take annual leave or long service leave during a period of incapacity for which compensation is payable. s84B inserted by 81 of 2004 and amended by 8 of 2007 to include long service leave. Where a worker takes annual leave or long service leave whilst his/her entitlement to workers compensation is pending or in dispute and the employer is subsequently found to be liable to pay weekly payments for that period, the worker's annual leave or long service leave is to be recredited.
<b>Northern Territory</b>	The <i>Workers Rehabilitation and Compensation Act</i> does not expressly permit the taking or accruing of leave and therefore s130 of the Act applies. Under this section an employee is not entitled to take or accrue any leave or absence (whether paid or unpaid) under this Part during a period (a compensation period) when the employee is absent from work because of a personal illness, or a personal injury, for which the employee is receiving compensation payable under a law (a compensation law) of the Commonwealth, a State or a Territory that is about workers' compensation. s130 of the Fair Work Act does not prevent an employee from taking unpaid parental leave during a compensation period.
<b>C'wealth Comcare</b>	s116 of the SRC Act 1988: (1) In spite of the provisions of any other Act, or an award, an employee is not entitled to be granted any kind of leave of absence with pay (other than maternity leave with pay) during, or in respect of, an period when the employee is or was on post-determination compensation leave but: (a) sick leave and recreation leave entitlements continue to accrue in relation to the employee during each of the first 45 weeks during which he or she is on post-determination compensation leave, and (b) long service leave entitlements continue to accrue in relation to the employee during the whole of the period of the post-determination compensation leave; as if the employee were not absent from work.
<b>C'wealth DVA</b>	Nil.
<b>Seacare</b>	Employees are not able to take any form of paid leave (other than maternity leave with pay) while they are on compensation leave (s137).
<b>New Zealand</b>	(1) A client [employee] has a period of annual leave in the 52 weeks before the commencement of his incapacity. What is the effect of that annual leave on the calculation of his weekly benefit? Answer: "Earnings as an employee" means all payments received by the client in the 52 weeks before the commencement of the incapacity that are subject to tax deductions. (2) A client in receipt of weekly compensation has made a partial return to work and is receiving partial weekly compensation. What is the effect on his weekly compensation if he takes a period of annual leave from his employment and receives holiday pay? Answer: In this scenario ACC would be required to abate the full amount of the holiday pay that he received, reducing the rate of weekly compensation that he received. ACC is also required to abate the full amount of any payment that the client receives for any statutory holiday. (3) A client in receipt of full unabated weekly compensation receives holiday pay on termination of employment. Answer: In such a situation, the holiday pay would be abated. The period over which it is abated depends on whether the holiday pay is for a specific period. If it is for a specific period (I.e., 4 weeks and 3 days), it is abated over that period.



**Table 2.14: Superannuation and workers' compensation**

	Included in wages for premium calculations	Included with income replacement payments
<b>New South Wales</b>	Yes	No
<b>Victoria</b>	Yes	No. However, workers are entitled to compensation in the form of superannuation contributions if weekly payments have been paid or payable for an aggregate period of 52 weeks and not ceased to be paid or payable and worker has not reached 65 years — s93CE.
<b>Queensland</b>	Yes	No
<b>Western Australia</b>	Yes (Worker Contributions). No (Contributions required by force of law).	No
<b>South Australia</b>	Yes	No, however, any amount otherwise payable to the worker that has been the subject of a voluntary salary sacrifice arrangement by the worker for superannuation purposes is included in the average weekly earnings calculation s4(13)(a).
<b>Tasmania</b>	Salary sacrifice only.	No
<b>Northern Territory</b>	No	No
<b>Australian Capital Territory</b>	No — Employer contributions required by force of law. Yes — if the employer's contributions are debited to the worker's salary package.	No — employer contributions required by force of law aren't considered to be part of a worker's earnings.
<b>C'wealth Comcare</b>	No — employer contribution. Yes — employee contribution amount.	No — employer contribution amount. Yes — employee contribution amount while still employed.
<b>C'wealth Seacare</b>	No	No
<b>C'wealth DVA</b>	N/A	No
<b>New Zealand</b>	No	No



# Chapter 3: Coverage and eligibility for benefits

## Coverage of workers

Workers' compensation coverage differs between each jurisdiction. The key aspect of workers' compensation coverage is to ensure that workers who should be are in fact covered. Determining whether a person is covered by workers' compensation depends on the definitions of:

- workers
- deemed workers
- injury, and
- workplace.

## Coverage of employees

To be eligible for compensation a person injured in the workplace must fall within the definition of worker in their jurisdiction. Determining what type of workers should be covered by workers' compensation is very important as penalties can apply if an employer does not insure its workers. A number of jurisdictions apply tests to determine if a worker requires coverage.

## Definitions of deemed workers

A deemed worker for workers' compensation purposes is a person who performs work for another in circumstances that fall outside of the general statutory definition of worker in a jurisdiction, but who is deemed by legislation to be a worker in order to receive a workers' compensation benefit.

Over time there has been a decline of employment under traditional arrangements. As new working arrangements have emerged, jurisdictions have modified the definition of 'workers' to ensure that workers under these arrangements are properly covered by workers' compensation. Table 3.2 provides a list of those deemed workers in each jurisdiction.

## Compensation coverage for volunteers

Table 3.3 provides a summary of workers' compensation arrangements in each jurisdiction for volunteers such as fire fighters, emergency service volunteers and persons performing community services or unpaid duties.

## Treatment of sportspersons

All jurisdictions that cover sporting activities in their workers' compensation legislation refer to the professional side of the sport only. Comcare and DVA have no direct reference to sport-related injuries. As New Zealand's scheme has much broader coverage, there is no distinction made between sport-related and any other injury; all receive the same cover. Similarly, in NSW, coverage for workers' compensation depends on whether the person is within the definition of a 'worker', it being noted that persons who might otherwise be workers are excluded where they are covered by the *Sporting Injuries Insurance Act 1978*. A full comparison of all jurisdictions can be found in Table 3.4.

## Workers' compensation arrangements for government employers

Table 3.5 summarises the legislation, self-insurance, claims managers and premiums covering workers' compensation for government employers in each of the jurisdictions.

## Workers' compensation arrangements for judges and members of parliament

Table 3.6 provides a summary of workers' compensation arrangements for judges and members of parliament in each jurisdiction.

**Table 3.1a: Definition of worker (see Table 2.4a for summary of coverage of worker)**

Definition of 'worker'	
<b>New South Wales</b>	A person who has entered into or works under a contract of service or a training contract with an employer (whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, and whether the contract is oral or in writing) certain exclusions apply — s4(1988) s4(1) (1998 Act). In addition, s5 of the 1998 Act provides that Schedule 1 of the 1998 Act deems outworkers, labour hire workers, some contractors and certain other classes of persons to be workers.
<b>Victoria</b>	'worker means an individual — a) who: (i) performs work for an employer, or (ii) agrees with an employer to perform work at the employer's direction, instruction or request, whether under a contract of employment (whether express, implied, oral or in writing) or otherwise; or b) who is deemed to be a worker under this Act;' — s5(1).
<b>Queensland</b>	A worker is an individual who works under a contract of service (s11 <i>Workers' Compensation and Rehabilitation Act 2003</i> ). A person who works under a contract, or at piecework rates, for labour only or substantially for labour only is a worker (Schedule 2 (1.1)). In particular, any person who works for another person under a contract (regardless of whether the contract is a contract of service) is a "worker" unless the person can satisfy all three elements of a results test, or it can be shown that a personal services business determination is in effect for the person under the <i>Income Tax Assessment Act 1997</i> (Cth). The three elements of the results test to be satisfied are that: the person performing the work is paid to achieve a specified result or outcome; the person performing the work has to supply the plant and equipment or tools of trade needed to perform the work, and; the person is, or would be, liable for the cost of rectifying any defect in the work performed. (Schedule 2 (1.1), <i>Workers' Compensation and Rehabilitation Act 2003</i> ).
<b>Western Australia</b>	Any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise and whether the contract is expressed or implied, is oral or in writing. The meaning of worker also includes: a) any person to whose service any industrial award or industrial agreement applies, and b) any person engaged by another person to work for the purpose of the other person's trade or business under a contract with him for service, the remuneration by whatever means of the person so working being in substance for his personal manual labour or services — s5(1). WorkCover WA guidance: <a href="#">Workers' Compensation and Injury Management: A Guide for Employers.</a> <a href="#">A Technical Note on Contractors and Workers' Compensation.</a>
<b>South Australia</b>	s3(2) of the <i>Workers Rehabilitation and Compensation Act 1986</i> defines a worker as: 'a) a person by whom work is done under a contract of service (whether or not as an employee) b) a person who is a worker by virtue of s103A, c) a self-employed worker and includes a former worker and the legal personal rep of a deceased worker. ' Also see definition of 'contract of service' and Regulation 5 — 'Contract of service and other terms'. For exclusions — s3(7) — regulations may exclude specified classes of workers and Regulation 6 — Exclusions.
<b>Tasmania</b>	<ul style="list-style-type: none"> <li>Any person who has entered into, or works under, a contract of service or training agreement with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is express or implied, or is oral or in writing, and</li> <li>Any person or class taken to be a worker for the purposes of the Act — s3(1).</li> </ul>
<b>Northern Territory</b>	Contract or agreement of any kind to perform work or a service. Exclusions apply for people who meet the 'Results test' or where there is a personal services business determination in effect for the person performing the work under the <i>Income Tax Assessment Act 1997</i> (Cth).

Definition of 'worker'	
<b>Australian Capital Territory</b>	<p>The Act devotes an entire chapter (Chapter 3) to defining and identifying a worker in general and certain categories of workers. The Minister may additionally make a declaration to deem persons in certain occupations to be workers.</p> <p>Individual who has entered into or works under a contract of service with an employer, whether the contract is expressed or implied, oral or written — s8(1)(a), workers for labour only or substantially labour only s8(1)(b), or works for another person under contract UNLESS they are paid to achieve a stated outcome, and has to supply plant and equipment, and is (or would be) liable for the cost of rectifying any defective work s8(1)(i)(a — c) OR has a personal services business determination s8(1)(ii).</p>
<b>C'wealth Comcare</b>	<p>"Employee" — a person employed by the Commonwealth or by a Commonwealth Authority whether the person is so employed under a law of the Commonwealth or of a Territory or under a contract of service or apprenticeship. Can also be covered if subject of a ministerial declaration.</p> <p>Also a person who is employed by a licensed corporation if a person performs work for that corporation under a law or a contract and the person would, if the corporation were not licensed, be entitled to workers' compensation in connection of that work — s4 and s5.</p>
<b>C'wealth Seacare</b>	<p>Seafarer (person employed in any capacity on a prescribed ship on the business of the ship, other than: a pilot, a person temporarily employed on the ship in port, or a person defined as a special personnel in s283 of the Navigation Act), trainee, person attending approved industry training or registering availability for employment or engagement on a prescribed ship — s4.</p>
<b>C'wealth DVA</b>	<p>Member or former member of the Permanent Forces, Reserves, or cadets of the Australian Defence Force who has rendered service on or after 1 July 2004 — MRCA s5.</p>
<b>New Zealand</b>	<p>An earner is a natural person who engages in employment for the purposes of pecuniary gain, whether or not as an employee — s(6) (also includes employees on unpaid parental leave, self-employed persons and employees who have purchased weekly compensation and employees who ceased work in the 28 days prior to incapacity, and who had an agreement to start work within three months of the date of incapacity or within 12 months for seasonal workers).</p>

Table 3.1b: Coverage of contractors and labour hire workers (see Table 2.4a for summary of coverage of workers)

	Are individual contractors covered under legislation?	Are labour hire workers covered under legislation?
<b>New South Wales</b>	Not unless contractor is a deemed worker pursuant to Schedule 1, 1998 Act. The final arbiter of whether a contractor is a deemed worker is the Workers' Compensation Commission and this is decided on the individual facts of each case. WorkCover may also apply tests determined by other Courts. One relevant test is whether the contract can be construed as a 'contract of service' (which would usually result in a finding that the person is a worker) or a 'contract for services' (which would usually result in a finding that the person supplying the services is not a worker).	Yes, labour hire firm held to be employer — Clause 2A., Schedule 1, 1998 Act.
<b>Victoria</b>	No, if employed under contract for service (unless they are a deemed worker); they are covered if enter into any form of contract of employment (definition of 'worker' in s5(1)).	Yes, labour hire firm held to be employer (definition of 'worker' in s5(1)).
<b>Queensland</b>	No, if employed under contract for services. The following guidance for determining whether a person is a worker is provided: <a href="#">Worker guidelines.</a> <a href="#">Worker determination.</a>	Yes, labour hire firm held to be employer.
<b>Western Australia</b>	No, unless employed under contract for service and remunerated in substance for personal manual labour or service.	Yes, labour hire firm held to be employer.
<b>South Australia</b>	Yes, if undertake prescribed work or work of a prescribed class — s3(6) of the <i>Workers Rehabilitation and Compensation Act 1986</i> and Regulation 5 of the <i>Workers Rehabilitation and Compensation Regulations 2010</i> . See also ' <a href="#">A Guide to the Definition of Worker</a> ' and <a href="#">chapter 3, Claims Operational Guidelines</a> .	Yes, labour hire firm held to be employer (s3(6)). See ' <a href="#">Registering with WorkCover: Employment services Guidelines</a> ' for more information.
<b>Tasmania</b>	No, if engaged under contract for services. Note — A person who is engaged under a contract of service would be regarded at common law as being an employee whereas a person who is engaged under a contract for service is regarded as being an independent contractor. Exception where contract is for work exceeding \$100 in value which is not related to a trade or business regularly carried on by the contractor in the contractor's own name or under a business or firm name — s4B.	Yes, labour hire firm held to be employer.
<b>Northern Territory</b>	No, if the person meets the 'Results test' or where there is a personal services business determination in effect for the person performing the work under the <i>Income Tax Assessment Act 1997</i> (Cth).	If the individual's contract or agreement is with the Labour Hire business they are the employer.
<b>Australian Capital Territory</b>	No, if employed under contract for services. However, there are provisions for the coverage of regular contractors.	Yes, where the individual is not an executive officer of the corporation and: <ul style="list-style-type: none"> <li>• the individual has been engaged by the labour hirer under a contract for services to work for someone other than the labour hirer</li> <li>• there is no contract to perform work between the individual and person for who work is to be performed, or</li> <li>• the individual does all or part of the work.</li> </ul>
<b>C'wealth Comcare</b>	No, if employed under contract for service.	Possibly, according to definition of nature of contract.
<b>C'wealth Seacare</b>	No, compensation only through employment of employees.	Possibly, according to definition of nature of contract.
<b>C'wealth DVA</b>	Only if a "declared member" — MRCA s8.	Only if a "declared member" — MRCA s8.
<b>New Zealand</b>	Yes	Yes, labour hire firm held to be employer.

Table 3.2: Deemed workers

Definition of deemed worker	
<b>New South Wales</b>	<p>Schedule 1 of the 1998 Act lists the twenty-one specific circumstances in which persons are deemed to be workers:</p> <ul style="list-style-type: none"> <li>1 workers lent or on hire</li> <li>1A outworkers</li> <li>2 other contractors</li> <li>2A contractors under labour hire services arrangements</li> <li>3 rural work</li> <li>4 timbergetters</li> <li>5 salespersons, canvassers, collectors and others</li> <li>6 tributers</li> <li>7 mine employees</li> <li>8 mines rescue personnel</li> <li>9 jockeys and harness racing drivers</li> <li>10 drivers of hire-vehicles or hire-vessels — contract of bailment</li> <li>11 caddies and others employed through club</li> <li>12 shearers' cooks and others</li> <li>13 fire fighters in fire districts</li> <li>14 workers at place of pick-up</li> <li>15 boxers, wrestlers, referees and entertainers</li> <li>16 voluntary ambulance workers</li> <li>17 ministers of religion</li> <li>18 ministers of religion covered by policies, and</li> <li>19 participants in training programs.</li> </ul>
<b>Victoria</b>	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> <li>(i) students under work experience and practical placement arrangements, apprentices, persons participating in declared training programs — s5F to 5H</li> <li>(ii) secretaries of cooperative — s5I</li> <li>(iii) door to door sellers — s5J</li> <li>(iv) timber contractors — s6</li> <li>(v) drivers of passenger vehicles — s7</li> <li>(vi) owner drivers carrying goods for reward — s7A</li> <li>(vii) contractors — s8</li> <li>(viii) sharefarmers — s11</li> <li>(ix) declared workers of religious bodies and organizations — s12</li> <li>(x) crown employees, Ministers, government members, judicial officers, bail justices, public corporation members, retired police reserve members — s14</li> <li>(xi) municipal councillors — s14AA</li> <li>(xii) persons engaged at places of pick-up for the purposes of being selected for work (e.g. fruit pickers) — s15</li> <li>(xiii) jockeys and track riders, riders and drivers in mixed sports gatherings — s16(4) and s16A</li> <li>(xiv) outworkers — s17, and</li> <li>(xv) sailors — s81(2).</li> </ul>
<b>Queensland</b>	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> <li>(i) workers lent or on hire (including labour hire firms and holding companies — Schedule 2 (1.6)</li> <li>(ii) sharefarmers — Schedule 2 (1.3)</li> <li>(iii) salespersons — Schedule 2 (1.4)</li> <li>(iv) labour workers — Schedule 2 (1.1)</li> <li>(v) contractors and workers of contractors — Schedule 2 (1.5).</li> </ul>

Definition of deemed worker	
<b>Western Australia</b>	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> <li>(i) workers lent or let on hire — s5(1)</li> <li>(ii) contract in substance for personal manual labour or service — s5(1)</li> <li>(iii) workers under an industrial award or agreement — s5(1)</li> <li>(iv) deceased worker — s5(1)</li> <li>(v) police officer — s5(1) (Who suffers an injury and dies as a result of that injury)</li> <li>(vi) clergy — s8, s9 and s10</li> <li>(vii) tributers — s7</li> <li>(viii) jockey — s11A</li> <li>(ix) crown workers — s14(2)</li> <li>(x) certain persons deemed workers — s175AA, and</li> <li>(xi) working directors — s10A.</li> </ul> <p>WorkCover WA guidance: Workers Compensation: A Guide for Employers.</p>
<b>South Australia</b>	<p>The definition of “contract of service” in s3(1) of the <i>Workers Rehabilitation and Compensation Act 1986</i> includes: “a contract, arrangement or understanding under which one person (the worker) works for another in prescribed work or work of a prescribed class”.</p> <p>Current classes of work prescribed under regulation 5 of the <i>Workers Rehabilitation and Compensation Regulations 2010</i>, include:</p> <ul style="list-style-type: none"> <li>• building work (other than wall or floor tilers)</li> <li>• cleaning work</li> <li>• council driving</li> <li>• taxi and hire car driving</li> <li>• transport driving</li> <li>• work as an entertainer</li> <li>• work as an outworker</li> <li>• work as a licensed jockey, and</li> <li>• work as a minister, priest or member of another religious order (except Anglican, Catholic, Lutheran and Uniting churches or the Salvation Army).</li> </ul> <p>Under s103 of the <i>Workers Rehabilitation and Compensation Act 1986</i>, the Corporation may also extend the application of the Act to self-employed persons.</p> <p>Under s103A of the <i>Workers Rehabilitation and Compensation Act 1986</i>, the Crown is the presumptive employer of volunteers of a prescribed class. Previously only Country Fire Service volunteers were prescribed by regulation — see comment on page 9 under ‘recent developments in workers compensation scheme’ regarding extension to Marine Rescue and State Emergency Service volunteers.</p>
<b>Tasmania</b>	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> <li>(i) contractors where the work exceeds \$100 and is not incidental to a trade or business regularly carried on by the contractor — s4B</li> <li>(ii) services of workers lent or on hire — s4A</li> <li>(iii) police volunteers ( i.e., volunteers performing police operations) — s6A</li> <li>(iv) volunteers performing fire-fighting operations and fire prevention operations — s5</li> <li>(v) volunteers providing ambulance services — s6</li> <li>(vi) port and harbour persons engaged at places of pickup — s25(4)</li> <li>(vii) salespersons, canvassers and collectors — s4C</li> <li>(viii) luxury hire car drivers and taxi drivers — s4DA and s4DB</li> <li>(ix) jockeys — s4DC</li> <li>(x) specified clergymen — s3(4)</li> <li>(xi) participants in training programs — s4D</li> <li>(xii) persons in relationship prescribed to be relationship between employer and worker — s4E, and</li> <li>(xiii) prescribed classes of volunteers — s6B. (none are prescribed for the purpose of 6B).</li> </ul>



Definition of deemed worker	
<b>Northern Territory</b>	<p>Circumstances under the Act and Regulations where a person may be deemed or prescribed to be a worker:</p> <ul style="list-style-type: none"> <li>(ii) workers of householders — s3(5)</li> <li>(iii) directors — s3(3)</li> <li>(iv) jockeys — r3A(1)(b)</li> <li>(v) taxi drivers — r3A(1)(c)</li> <li>(vi) community work and volunteers — s3(4)</li> <li>(vii) persons specifically prescribed by the Regulations</li> <li>(viii) family members — s3(2)</li> <li>(ix) emergency service volunteers — s3(7), and</li> <li>(x) volunteer fire fighters — s3(8) and s3(8A).</li> </ul>
<b>Australian Capital Territory</b>	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> <li>(i) casuals (in certain instances) — s10</li> <li>(ii) regular contractors — s11(1)</li> <li>(iii) subcontracting — s13</li> <li>(iv) trainees — s14</li> <li>(v) outworkers — s15</li> <li>(vi) timber contractors — s16</li> <li>(vii) family day care carers — s16A</li> <li>(viii) religious workers — s17</li> <li>(ix) volunteers — s17A</li> <li>(x) commercial voluntary workers — s18, and</li> <li>(xi) public interest voluntary workers — s19.</li> </ul>
<b>C'wealth Comcare</b>	<p>The following persons are deemed to be employees of the Commonwealth, provided they perform certain duties:</p> <ul style="list-style-type: none"> <li>(i) the Commissioner of the Australian Federal Police (AFP), Deputy Commissioner of the AFP or an AFP worker</li> <li>(ii) a member of the Defence Force in certain circumstances, or</li> <li>(iii) a person who is the holder of or is acting in: <ul style="list-style-type: none"> <li>a) an office established by a law of the Commonwealth, or</li> <li>b) an office that is established by a law of a Territory (other than an ACT enactment or a law of the Northern Territory) and is declared by the Minister to be an office to which the <i>Safety Rehabilitation and Compensation Act</i> applies — s5(2).</li> </ul> </li> </ul> <p>The <i>Safety Rehabilitation and Compensation Act</i> deems certain categories of persons to be employees of the Commonwealth and the Minister may declare persons who engage in activities or perform acts at the request of the Commonwealth or a licensee as employees — s5(6). This includes those undertaking work for the Commonwealth on a voluntary basis. Such volunteers, following a declaration by the Minister, are deemed to be Commonwealth employees for the purposes of workers' compensation.</p> <p>At the request of the Chief Minister of the Australian Capital Territory (ACT), The Minister may make a written declaration that persons may be taken to be employees of the ACT government when engaging in certain activities — s5(15).</p>
<b>C'wealth Seacare</b>	The Act does not include any category of 'deemed' worker.
<b>C'wealth DVA</b>	Only if a 'declared member' — MRCA s8.
<b>New Zealand</b>	An earner is a natural person who engages in employment for the purposes of pecuniary gain, whether or not as an employee — s6.

Table 3.3: Workers' Compensation coverage for volunteers

Workers' Compensation coverage for volunteers	
<b>New South Wales</b>	<ul style="list-style-type: none"> <li>• Volunteer ambulance workers who engage in any ambulance work with the consent of or under the authority and supervision of or in cooperation with the Health Administration Corporation constituted by the <a href="#">Health Administration Act 1982</a>.</li> <li>• Volunteer fire-fighters who engage in fighting a bush fire in any fire district constituted under the <a href="#">Fire Brigades Act 1989</a> or are undergoing training for the purposes of fighting bush fires in those circumstances.</li> <li>• Volunteers who are defined in the <i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</i> i.e. Rural Fire Service, State Emergency Service, Surf Life Saving, Volunteer Rescue Association and Marine Rescue Service.</li> </ul>
<b>Victoria</b>	<p>Under certain Acts, volunteers assisting Government Agencies are entitled to compensation in accordance with the <i>Accident Compensation Act 1985</i> if injured while carrying out specified duties. Volunteers covered include:</p> <ul style="list-style-type: none"> <li>• volunteer auxiliary workers, officers and volunteer members of the Country Fire Authority (<i>Country Fire Authority Act 1956</i>)</li> <li>• volunteers assisting police officers (<i>Police Assistance Compensation Act 1968</i>)</li> <li>• volunteer school workers or volunteer student workers (<i>Education Training and Reform Act 2006</i>)</li> <li>• jurors (<i>Juries Act 2000</i>)</li> <li>• volunteers in prisons and offenders working or participating in a program under a Correctional Order (<i>Sentencing Act 1991</i> or <i>Corrections Act 1986</i>), and</li> <li>• registered and casual emergency workers (<i>Victoria State Emergency Service Act 2005</i>, <i>Emergency Management Act 1986</i>).</li> </ul>
<b>Queensland</b>	<p>Workers' compensation coverage may extend to the following volunteers if WorkCover has entered into a contract of insurance with the responsible authority/person/charitable institution/not-for-profit organisation:</p> <ul style="list-style-type: none"> <li>• particular persons under <i>Disaster Management Act 2003</i></li> <li>• volunteer fire fighter or volunteer fire warden</li> <li>• honorary ambulance officers</li> <li>• rural fire brigade member</li> <li>• person in voluntary or honorary position with religious, charitable or benevolent organisation</li> <li>• person in voluntary or honorary position with non-profit organisation, and</li> <li>• persons performing community service or unpaid duties.</li> </ul>
<b>Western Australia</b>	<ul style="list-style-type: none"> <li>• No provision under the <i>Workers' Compensation and Injury Management Act 1981</i> (the Act).</li> <li>• Some volunteers are covered for personal injury under private insurance.</li> </ul>
<b>South Australia</b>	<ul style="list-style-type: none"> <li>• s103A of the <i>Workers' Rehabilitation and Compensation Act 1986</i> establishes the Crown as the presumptive employer of volunteers as prescribed by the regulations.</li> <li>• Under regulation 17 of the <i>Workers' Rehabilitation and Compensation Regulations 2010</i> Country Fire Service volunteers have been deemed as workers for many years.</li> <li>• On 14 June 2012 this regulation was extended to apply to Marine Rescue and State Emergency Service volunteers as workers, taking effect from 14 October 2012.</li> </ul>
<b>Tasmania</b>	<ul style="list-style-type: none"> <li>• Volunteers performing police operations.</li> <li>• Volunteers performing fire-fighting operations and fire prevention operations.</li> <li>• Volunteers providing ambulance services.</li> </ul>
<b>Northern territory</b>	<ul style="list-style-type: none"> <li>• Emergency service volunteers.</li> <li>• Volunteer fire fighters.</li> </ul>
<b>Australian Capital Territory</b>	<ul style="list-style-type: none"> <li>• Commercial voluntary workers (e.g. volunteer marshals at an event run by a corporation incorporated under the Corporations Act).</li> <li>• Public interest voluntary workers.</li> </ul>
<b>C'wealth Comcare</b>	<ul style="list-style-type: none"> <li>• CSIRO — volunteer fellows.</li> <li>• Volunteers who assist in the running of the: <ul style="list-style-type: none"> <li>- Australian National Gallery</li> <li>- Australian War Memorial</li> <li>- Australian National Botanic Gardens</li> <li>- Australian National Maritime Museum</li> </ul> </li> </ul>

<b>Workers' Compensation coverage for volunteers</b>	
	<ul style="list-style-type: none"> <li>- Australian Nature Conservation Agency</li> <li>- National Science and Technology Centre (Questacon) National Museum of Australia, and</li> <li>- Old Parliament House.</li> <li>• Volunteers in connection with Australian Film, Television and Radio School.</li> <li>• Volunteers in connection with lighthouse keeping on Maatsuyker Island.</li> <li>• Volunteers in relation to search and rescue services and training exercises provided by Australian Maritime Safety Authority.</li> <li>• Volunteers who participate in recruit training exercise for the Australian Protective Service.</li> <li>• Volunteers promoting the House of Representatives and the Parliament to the community. Volunteers providing fire fighting, search and rescue and first aid services, attending environmental incidents and taking part in training exercises for the Snowy Mountains Hydro-electric Authority.</li> <li>• Volunteers assisting the Department of the Environment and Heritage (excluding the Bureau of Meteorology) and the Director of National Parks.</li> <li>• Volunteers assisting the National Capital Authority in fostering an awareness of Canberra as the National Capital.</li> <li>• Volunteers assisting in the administration of the CHOGM 2001, 2002.</li> <li>• Volunteers assisting the Sydney Harbour Federation Trust.</li> <li>• Volunteers assisting in APEC 2007.</li> </ul>
<b>C'wealth DVA</b>	Volunteers who, under the control or direction of a Commonwealth officer, render services in an institution or for a service conducted by the Department of Veterans' Affairs.

**Table 3.4: Treatment of sportspersons and sporting injuries**

Treatment of sportsperson and sporting injuries	
<b>New South Wales</b>	<p>A sporting participant meeting the definition of a “worker” is covered under the <i>Workplace Injury Management and Workers’ Compensation Act 1998</i> unless he/ she is a registered participant of a sporting organisation (within the meaning of the <i>Sporting Injuries Insurance Act 1978</i>) while: (i) participating in an authorised activity (within the meaning of that Act) of that organisation, or (ii) engaged in training or preparing himself or herself with a view to so participating, or (iii) engaged on any daily or periodic journey or other journey in connection with the registered participant so participating or the registered participant being so engaged, if, under the contract pursuant to which the registered participant does any of the things referred to above in this paragraph, the registered participant is not entitled to remuneration other than for the doing of those things.</p> <p>The <i>Sporting Injuries Insurance Act 1978</i> provides coverage for serious injury and death while participating in an authorised activity to persons who are registered members of a sporting organisation that is recognised by the Sporting Injuries Committee.</p> <p>The <i>Sporting Injuries Insurance Act 1978</i> exemption to the definition of “worker” contained within the <i>Workplace Injury Management and Workers’ Compensation Act 1998</i> does not apply to the following “deemed workers”. For exemptions see Table 3.2.</p>
<b>Victoria</b>	<p><i>Accident Compensation Act 1985</i> — s16</p> <p>(1) Except as provided in ss(4), where a person is engaged by an employer to participate as a contestant in a sporting or athletic activity, neither the employer or self-insurer nor the Authority or authorised insurer is liable to pay compensation for an injury received by the person if —</p> <p>a) the injury is received while the person is —</p> <p>(i) participating as a contestant in a sporting or athletic activity;</p> <p>(ii) engaged in training or preparation with a view to so participating; or</p> <p>(iii) travelling between a place of residence and the place at which the person is so participating or so engaged.</p> <p>(4) Except for jockeys and harness riders (see Table 3.2).</p>
<b>Queensland</b>	<p><i>Workers Compensation and Rehabilitation Act 2003</i> — Schedule 2 Part 2 — Persons who are not workers</p> <p>2 — A person who performs work under a contract of service as a professional sportsperson is not a worker while the person is — a) participating in a sporting or athletic activity as a contestant, or b) training or preparing for participation in a sporting or athletic activity as a contestant, or c) performing promotional activities offered to the person because of the person’s standing as a sportsperson, or d) engaging on any daily or other periodic journey in connection with the participation, training, preparation or performance.</p>
<b>Western Australia</b>	<p><i>Workers Compensation and Injury Management Act 1981</i> s11 — Exclusion of certain persons who are contestants in sporting or athletic activities</p> <p>Notwithstanding anything in s5 and subject to s11A, a person is deemed not to be a worker while they are: a) participating as a contestant in any sporting or athletic activity b) engaged in training or preparing himself with a view to his so participating c) engaged in promotional activities in accordance with the contract pursuant to which he so participates, or d) engaged on any regular journey, daily, or other periodic journey, or other journey in connection with his so participating or being so engaged, if, under that contract, he is not entitled to any remuneration other than remuneration for the doing of those things.</p> <p>Except for licensed jockeys under the <i>Racing and Wagering Western Australia Act 2003</i> while engaged in racing or riding work or carrying out their their usual duties as of a Jockey — s11A.</p>
<b>South Australia</b>	<p>s58 of the <i>Workers’ Rehabilitation and Compensation Act 1986</i> states:</p> <p>1. Notwithstanding any other provision of this Act, but subject to ss(2), where:</p> <p>a) a worker is employed by an employer solely:</p> <p>(i) to participate as a contestant in a sporting or athletic activity (and to engage in training or preparation with a view to such participation), or</p> <p>(ii) to act as a referee or umpire in relation to a sporting or athletic contest (and to engage in training or preparation with a view to so acting); and b) remuneration is not payable under the contract of employment except in respect of such employment, an injury arising out of or in the course of that employment is not compensable.</p> <p>2. This section does not apply to:</p> <p>a) a person authorised or permitted by a racing controlling authority within the meaning of the <i>Authorised Betting Operations Act 2000</i> to ride or drive in a race within the meaning of that Act, or</p> <p>b) a boxer, wrestler or referee employed or engaged for a fee to take part in a boxing or wrestling match, or</p> <p>c) a person who derives an entire livelihood, or an annual income in excess of the prescribed amount, from employment of a kind referred to in ss(1)(a).</p> <p>3. In this section:</p> <p>the prescribed amount means:</p> <p>a) in relation to 1987 — \$27 200 for method of indexation, or</p> <p>b) in relation to a subsequent year — a sum (calculated to the nearest multiple of \$100) that bears to \$25 000 the same proportion as the Consumer Price Index for the</p>

Treatment of sportsperson and sporting injuries	
	<p>September quarter of the immediately preceding year bears to the CPI for the September quarter, 1985.</p> <p>A professional sportsperson's prescribed income for 2012 is \$63 200 (see WorkCover's <a href="#">Schedule of Sums</a>).</p>
<b>Tasmania</b>	<p><i>Workers' Rehabilitation and Compensation Act 1988</i> s7. Exclusion of certain persons who are contestants in sporting activities.</p> <p>A person is deemed not to be a worker within the meaning of the Act while he is, pursuant to a contract: a) participating as a contestant in any sporting or athletic activity b) engaged in training or preparing himself with a view to his so participating, or c) travelling in connection with his so participating or being so engaged — if, under that contract, he is not entitled to any remuneration other than remuneration for the doing of those things.</p> <p>Jockeys — s7 does not apply to jockeys and apprentices whilst engaged in riding at a race meeting or official trial or whilst riding in a training session for a licensed trainer — s4DC.</p>
<b>Northern Territory</b>	<p><i>Workers' Rehabilitation and Compensation Act 2008</i>. A person shall be deemed not to be a worker while they are: a) participating as a contestant in a sporting or athletic activity b) engaged in training or preparing themselves with a view to his or her so participating, or c) travelling in connection with them so participating or being so engaged, unless, under the contract, they are entitled to remuneration of not less than the prescribed amount per year or at a rate that, if the contract continued for a year, would result in his or her receiving remuneration of not less than that amount — s3(10) — 3A. Definition of "worker" — Jockeys are defined as workers.</p>
<b>Australian Capital Territory</b>	<p><i>Workers' Compensation Act 1951</i> s84 — Compensation for sporting injuries. A person is not entitled to receive compensation for an injury sustained as a result of the person's engagement in professional sporting activity. s177 Premiums — remuneration for professional sporting activity. An employer is not liable to pay any part of a premium for a compulsory insurance policy calculated by reference to the remuneration payable to an employee for engaging in professional sporting activity.</p>
<b>C'wealth Comcare</b>	<p>Nothing specific in legislation. The <i>Safety, Rehabilitation and Compensation Act 1988</i> provides that in the case of an injury, compensation is payable where the injury 'arises out of or in the course of employment.'</p>
<b>C'wealth Seacare</b>	<p>Nothing specific in legislation. The <i>Seafarers Rehabilitation and Compensation Act 1992</i> provides that in the case of an injury, compensation is payable where the injury 'arises out of or in the course of employment'.</p>
<b>C'wealth DVA</b>	<p>Nothing specific in legislation. Each claim for an injury sustained during a sporting or leisure activity will be decided on its own merits in accordance with the principle of 'relatedness to service' and relevant case law applicable at the time the claim is considered.</p>
<b>New Zealand</b>	<p>The <i>Accident Compensation Act 2001</i> provides broad cover for personal injury and makes no distinction in coverage between sport-related injury and any other injury. However, injuries that are not work-related are not funded through levies collected from employers.</p>

Table 3.5: Workers' compensation arrangements for government employers

	Legislation	Self-insurance	Claims managers	Premiums
<b>New South Wales</b>	<i>Workers' Compensation Act 1987. Workplace Injury Management and Workers Compensation Act 1998.</i>	Several different types of cover are available to public sector employers in NSW: <ul style="list-style-type: none"> <li>• NSW Self-Insurance Corporation (SICorp) manages and administers the Treasury Managed Fund (TMF) which is a NSW Government self insurance scheme providing workers' compensation insurance coverage for all general government sector agencies and a number of state-owned corporations that have elected to join the scheme</li> <li>• a number of government agencies and state owned corporations are licensed self insurers in NSW, and</li> <li>• Specialised Insurers are licensed in similar fashion to self-insurers but organised on an industry basis. Most local councils in NSW are insured through StateCover Mutual, a specialised insurer in NSW.</li> </ul>	<ul style="list-style-type: none"> <li>• All claims under the TMF are handled by claim agents, which are approved insurers on behalf of SICorp.</li> <li>• The claims of self insured agencies are managed by the licensed self-insurer organisations.</li> <li>• Most claims of local councils in NSW managed by the licensed specialised insurer StateCover Mutual.</li> </ul>	<p>TMF (SICorp): Deposit-premium funding process for budget-dependent agencies which is calculated by multiplying the Funding Rate by an agency's total wage costs.</p> <p>StateCover Mutual determines annual contributions in accordance with its published premium rating methodology.</p>
<b>Victoria</b>	<i>Accident Compensation Act 1985.</i>	Bodies corporate and the Municipal Association of Victoria can apply to become self-insurers in Victoria — s141.  Government agencies are neither and therefore cannot become self-insurers under Victorian legislation.	Each government agency chooses one of the agents appointed by WorkSafe Victoria to manage claims on their behalf.  Employers, including government agencies, may change agents once per year if they believe another agent will provide better service.	Government agencies must have worker's compensation insurance and pay premiums to the WorkCover fund.  Administration of policies and the calculation of premium is the same as for private sector employers.
<b>Queensland</b>	<i>Workers' Compensation and Rehabilitation Act 2003.</i>	Local governments can apply for self-insurance. State Government Owned Corporations and other statutory bodies were able to self-insure until a 1998 government directive stating they were to remain with the WorkCover system. Departments of government cannot apply for single self-insurance licences unless all departments are joined in the licence.	All claims are handled by WorkCover Queensland.	All employers are required to pay a premium for a workers' compensation policy.
<b>Western Australia</b>	<i>Workers' Compensation and Injury Management Act 1981.</i>	Agencies are underwritten by the Insurance Commission of WA through the "RiskCover" fund. No government agencies are directly self insured.	All government agency claims are handled by RiskCover.	All government agencies must have workers' compensation coverage with RiskCover. Premiums are paid direct to RiskCover.
<b>South Australia</b>	<i>Workers' Rehabilitation and Compensation Act 1986. Workers Rehabilitation and Compensation Regulations 2010.</i>	The Crown and any agency or instrumentality of the Crown is deemed to be a self-insured employer under s61 of the Act and therefore meet all of the costs associated with worker's compensation claims.	Crown agencies assume the role of the compensating authority in respect of the management of workers' compensation.	Crown agencies are required to pay a fee each year as a contribution towards the costs associated with scheme administration.
<b>Tasmania</b>	<i>Workers' Rehabilitation and Compensation Act 1988.</i>	The Crown and any agency or instrumentality of the Crown is deemed to be an exempt	Claims administration is undertaken by a Fund Administration Agent, Marsh Pty	The Fund operates on a cost recovery basis with contributions set

	Legislation	Self-insurance	Claims managers	Premiums
		<p>employer under s97(9) and 114(5) of the Act and is therefore self-insured and meets all of the costs associated with worker's compensation claims.</p> <p>The Tasmanian Risk Management Fund is a whole-of-government self-insurance arrangement for funding and managing the insurable liabilities of inner-Budget agencies.</p> <p>The Fund is administered by the Department of Treasury and Finance.</p>	Ltd, who is engaged under contract.	to ensure adequate financial provision for the cost of risk now and into the future. The level of Agencies contributions is determined by an independent actuary to reflect their risk exposure, claims experience and nominated excess amount.
<b>Northern Territory</b>	<i>Workers' Rehabilitation and Compensation Act 2008.</i>	<p>Local Government and some statutory agencies are insured with approved insurers.</p> <p>The majority of the Northern Territory Public Service (NTPS) is 'insurance exempt' and is treated as a self insurer.</p>	For the majority of the Northern Territory Public service claims are managed by an approved insurer, TIO, in partnership with the Dept of Business and Employment (DBE) and the parent agency. The NTPS pays a fee for this service. Some agencies are insured commercially, and the insurer manages these claims.	Unless the government agency insures with an approved insurer, no premium is paid. Claims are paid by the Agency.
<b>Australian Capital Territory</b>	<i>Safety, Rehabilitation and Compensation Act 1988 (Cth).</i>	All ACT Government workers are covered under the Comcare scheme.	All government claims are handled by Comcare.	A premium is paid to Comcare annually.
<b>Commonwealth Comcare</b>	<i>Safety, Rehabilitation and Compensation Act 1988 (Cth).</i>	<p>Commonwealth Authorities (defined in the Act) may be granted a licence to self insure which may include self management of claims.</p> <p>Departments of state are not such authorities and are not eligible to apply.</p> <p>Note: current licensed authorities are Australia Postal Corporation and Reserve Bank of Australia.</p>	<p>All government claims except those covered by self-insurance are managed by Comcare.</p> <p>Claims by the 2 licensed authorities are managed in-house by those authorities.</p>	Commonwealth entities, other than those 2 licensed Commonwealth authorities pay experienced based premiums to Comcare annually.
<b>Commonwealth Seacare</b>	<i>Seafarers Rehabilitation and Compensation Act 1992.</i>	N/A	Act does not apply to employees covered by the <i>Safety, Rehabilitation and Compensation Act 1988.</i>	Act does not apply to employees covered by the <i>Safety, Rehabilitation and Compensation Act 1988.</i>
<b>Commonwealth DVA</b>	N/A	N/A	N/A	N/A
<b>New Zealand</b>	<i>Accident Compensation Act 2001.</i>	—	<p>All government claims except those covered by Accredited Employers are managed by ACC.</p> <p>Claims by Accredited Employers are managed by those employers, either in-house or by a contracted third-party administrator.</p>	Government employers pay levies to ACC like all other employers unless they are Accredited Employers.

**Table 3.6: Workers' compensation arrangements for judges and members of parliament**

	Coverage for judges	Coverage for members of parliament
<b>New South Wales</b>	Covered as state government employees.	Members and electorate officers are covered by insurance arranged with the NSW Treasury Managed Fund which includes personal accident insurance and workers' compensation insurance in connection with their electorate or parliamentary duties. Members need to satisfy the Treasury Managed Fund and, if subject to dispute the Treasurer that they were on duty at the time of the accident.
<b>Victoria</b>	Covered as state government employees — s14(2) <i>Accident Compensation Act 1985</i> .	s14(2) of the <i>Accident Compensation Act 1985</i> provides that politicians are covered.
<b>Queensland</b>	Covered as state government employees.	All Members have personal accident indemnity cover on a twenty-four hour basis. Members are indemnified in the event of injury, as defined, resulting in death. The cover is administered by the Under Treasurer (Clause 2.4 Members' Entitlements Handbook).
<b>Western Australia</b>	Covered as state government employees.	Not covered for workers' compensation, although insurance is taken out by the Joint House Committee, consistent with personal injury insurance.
<b>South Australia</b>	Covered as state government employees.	Not covered for workers' compensation, although an administrative arrangement provides the equivalent of workers' compensation.
<b>Tasmania</b>	Covered as state government employees.	Workers' compensation is not provided to Members of Parliament. Members of Parliament are eligible for personal accident cover in the event of an injury whilst in service to the Government. Cover is provided by the Tasmanian Risk Management Fund (TRMF). The TRMF provides no-fault personal accident cover for Ministers and Members of Parliament who suffer or aggravate an injury which arises out of, and in the course of, their official parliamentary duties or contract a disease for which their official parliamentary duties was the major contributor.
<b>Northern Territory</b>	Covered as government employees.	Covered as government employees.
<b>Australian Capital Territory</b>	Covered as government employees.	Not covered under the legislation.
<b>C'wealth Comcare</b>	Separate arrangements. s5(8) of the <i>Safety, Rehabilitation and Compensation Act 1988</i> (Cth) excludes judges from coverage under that Act.	Separate arrangements. s5(8) of the <i>Safety, Rehabilitation and Compensation Act 1988</i> (Cth) excludes members of parliament and Ministers of State from coverage under that Act.
<b>C'wealth Seacare</b>	N/A	N/A
<b>C'wealth DVA</b>	N/A	N/A
<b>New Zealand</b>	Covered as any other employee under the <i>Accident Compensation Act 2001</i> .	Covered as any other employee under the <i>Accident Compensation Act 2001</i> .



## **Coverage of work and injury**

An entitlement to workers' compensation is reliant on the relationship of a worker's injury to work.

### **Journeys and breaks**

Injuries that occur on work premises while a person is working are easily identifiable as occurring at work. However it is not always simple to determine whether or not a person was at work when injured. Table 3.8 provides information on the variations between the jurisdictions regarding whether or not they provide workers' compensation coverage for people who are injured on:

- journeys to and from work
- work-related travel
- breaks spent at the work premises, and
- breaks spent outside the work premises.

### **Definition of injury**

Workers' compensation schemes generally deem that a worker is entitled to workers' compensation if they have suffered an injury that arises out of or in the course of employment. It is therefore essential for workers to establish that they have suffered an injury as defined in the relevant legislation. Although the everyday ordinary meaning of injury is any harm caused to a person's body as a result of any form of trauma, each jurisdiction places limits on the term injury and defines it differently. To determine whether an incident falls within the definition of injury several factors need to be considered (refer to Table 3.9 for more information).

### **Relationship to employment and contribution of employment**

Where any incident has occurred in the workplace, it needs to be determined that there is a relationship between the injury and employment before the worker can claim workers' compensation. In addition, a worker's employment has to contribute to the injury to a certain extent before a worker is entitled to compensation.

Table 3.10 provides information on how each jurisdiction defines injury, its relationship to employment and the contribution of employment to the injury.

### **Aggravation and acceleration**

Sometimes employment is not the original cause of an injury. However employment can aggravate or accelerate an existing injury. As at September 2011, aggravation and acceleration of existing injuries was covered in all jurisdictions.

## Diseases

Diseases are classed differently to physical injuries. Diseases include any physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development. As the definition of 'disease' is interpreted differently in each jurisdiction, all jurisdictions, except Queensland, have in their legislation tables of diseases that are deemed to be caused by work. Appendix 2 Table 1 on provides a jurisdictional comparison of these lists of diseases deemed to be caused by work.

## Industrial deafness

Industrial deafness is generally examined separately from other forms of injuries. All jurisdictions have an impairment threshold in place for industrial deafness, which means that an injured worker is not entitled to lump sum compensation until they reach the threshold level. Table 3.7 illustrates the industrial deafness provisions in each jurisdiction.

**Table 3.7: Industrial deafness thresholds**

Industrial deafness thresholds	
<b>New South Wales</b>	For claims made on or after 19 June 2012, the threshold is greater than 10% permanent impairment — s66(1), 1987 Act. 6% binaural hearing loss threshold only applies to exempt workers, ie: <ul style="list-style-type: none"> <li>• police officers, paramedics, fire fighters, and</li> <li>• bush fire fighters and emergency service volunteers.</li> </ul>
<b>Victoria</b>	No specific level of hearing loss required to claim compensation (e.g. medical expenses). 10% hearing loss and further hearing loss required for lump sum impairment benefit — s89, s91 and s98C.
<b>Queensland</b>	Not for the first 5% — s125.
<b>Western Australia</b>	At least 10% hearing loss for first election — s24A. Further 5% for subsequent elections — s24A.
<b>South Australia</b>	There are no specific thresholds provided in the <i>Workers Rehabilitation and Compensation Act 1986</i> in order for hearing loss to be compensable, however, a lump sum for non-economic loss is only payable if there is a 5% or greater whole person impairment (WIP) — s43.
<b>Tasmania</b>	5% binaural hearing impairment — s72A(3).
<b>Northern Territory</b>	Impairments no less than 5% — s70.
<b>Australian Capital Territory</b>	6% hearing loss (boilermakers deafness or similar deafness) — s64(1).
<b>C'wealth Comcare</b>	Binaural hearing loss of less than 5% is not payable — s24(7A).
<b>C'wealth Seacare</b>	10% hearing loss — s39(7).
<b>C'wealth DVA</b>	At least 5 impairment points hearing loss — MRCA s69(a).
<b>New Zealand</b>	6% binaural hearing loss — s26(1A).

Table 3.8: Definition of work — journeys and breaks

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
<b>Journeys to and from work</b>	Yes, (some restrictions) for: police officers, paramedics, fire fighters, bush firefighters and emergency service volunteers, workers injured while working in or around a coal mine, people with a dust disease claim under the <i>Workers Compensation (Dust Diseases) Act 1942</i> , Clauses 4, 25 and 26, Part 19H, Schedule 6, 1987 Act.  For all other workers with injuries received on or after 19 June 2012 there must be a real and substantial connection between employment and the accident or incident out of which the injury arose — s10 1987 Act and Clause 18, Part 19H, Schedule 6, 1987 Act.	No — s83.	Yes, some restrictions — s35.	No — s19(2).	Generally no. Only where there is a real and substantial connection between the employment and the accident out of which the injury arises — s30(5).	No, some exceptions — s25(6).	Yes, some restrictions — s4.	Yes — s36.	No, some exceptions — s6(1C).	Yes — s9(e).	Yes — s27; exceptions — s35.	Yes, some restrictions — s28(1)(b).
<b>Work-related travel</b>	Yes — s10 1987 Act.	Yes, some restrictions — s83.	Yes — s34.	Yes — s19(1).	Yes — s30.	Yes — s25(6).	Yes — s4.	Yes — s36.	Yes — s6(1)(d).	Yes — s9(e).	Yes — s27; exceptions — s35.	Yes — s28(1)(a).

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
<b>Breaks — onsite</b>	Yes — s11, 1987 Act.	Yes — s83.	Yes — s34(1)(c).	Yes	Yes, if the break is authorised — s30(3).	Yes — s25(6).	Yes — s4.	No reference.	Yes — s6(1)(b).	Yes — s9(b).	Yes — s27.	Yes — s28(1)(b).
<b>Breaks — offsite</b>	Yes — s11, 1987 Act.	Yes — s83.	Yes — s34(1)(c).	No reference in the Act. Coverage depends on factual circumstances or common law.	No	No, some exceptions — s25(6).	Yes — s4.	No reference.	Yes — ordinary recesses. Since 7/12/2011.	Yes — s9(b).	Yes — s27.	Yes, some restrictions.

Table 3.9: Definition of injury and relationship to employment — detailed

	Definition of injury and relationship to employment	Contribution of employment
<b>New South Wales</b>	<p>“...injury:</p> <p>a) means personal injury arising out of or in the course of employment,</p> <p>b) includes a disease injury, which means:</p> <p>(i) a disease that is contracted by a worker in the course of employment but only if the employment was the main contributing factor to contracting the disease, and</p> <p>(ii) the aggravation, acceleration, exacerbation or deterioration in the course of employment of any disease, but only if the employment was the main contributing factor to the aggravation, acceleration, exacerbation or deterioration of the disease; and</p> <p>c) does not include (except in the case of a worker employed in or about a mine) a dust disease, as defined by the <a href="#">Workers' Compensation (Dust Diseases) Act 1942</a>, or the aggravation, acceleration, exacerbation or deterioration of a dust disease, as so defined.”</p> <p>— s4, 1987 Act.</p>	<p>“No compensation is payable under this Act in respect of an injury (other than a disease injury) unless the employment concerned was a substantial contributing factor to the injury.</p> <p><b>Note.</b> In the case of a disease injury, the worker's employment must be the main contributing factor. See s4.” — s9A (1), 1987 Act.</p>
<b>Victoria</b>	<p>“... an injury arising out of, or in the course of, any employment . . .” — s82(1).</p>	<p>Compensation is not payable in respect of the following injuries unless the worker's employment was a significant contributing factor to the injury: a) a heart attack or stroke injury b) a disease contracted by a worker in the course of employment (whether at, or away from, the place of employment), or c) a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease — s82(2B) and s82(2C).</p>
<b>Queensland</b>	<p>“... a personal injury arising out of, or in the course of, employment . . .” — s32(1).</p>	<p>A significant contributing factor — s32(1).</p>
<b>Western Australia</b>	<p>“... a personal injury by accident arising out of or in the course of the employment . . .” — s5.</p>	<p>Injury includes: a disease contracted by a worker in the course of his employment at or away from his place of employment and to which the employment was a contributing factor and contributed to a significant degree — s5.</p>
<b>South Australia</b>	<p>“... injury arises out of, or in the course of employment . . .” — s30.</p>	<p>A substantial cause (for psychiatric injury only) — s30A(a).</p>
<b>Tasmania</b>	<p>“Injury includes —</p> <p>1. a disease, and</p> <p>2. the recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease where the employment was the major or most significant contributing factor to that recurrence, aggravation, acceleration, exacerbation or deterioration.” — s3(1).</p> <p>“An injury, not being a disease, arising out of, or in the course of employment” — s25(1)(a).</p> <p>“an injury, which is a disease, to which his employment contributed to a substantial degree” — s25(1)(b).</p>	<p>To a substantial degree, that is, employment is the 'major or most significant factor' (for diseases only) — s3(2A).</p> <p>Employment being the major or most significant contributing factor is also a requirement in relation to injuries that are a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease (s3(1) — in definition of “injury”).</p>
<b>Northern Territory</b>	<p>“... a physical or mental injury . . . out of or in the course of employment . . .” — s3 and s4.</p>	<p>To a material degree, (for diseases — s4(6) and gradual process — (s4(5)) that is employment was the real, proximate or effective cause (s4(8)).</p>

Definition of injury and relationship to employment	Contribution of employment	
<b>Australian Capital Territory</b>	<p>“a physical or mental injury (including stress) . . . includes aggravation, acceleration or recurrence of a pre-existing injury . . . arising out of, or in the course of, the worker’s employment . . .” — s4 and s31.</p>	<p>A substantial contributing factor — s31(2).</p>
<b>C’wealth Comcare</b>	<p>For injuries: “. . . a physical or mental injury arising out of, or in the course of, the employee’s employment . . .”, or  ‘... an aggravation of a physical or mental injury (other than a disease) suffered by an employee ...’ — s5A.  For diseases: “an ailment or aggravation of an ailment...that was contributed to, to a significant degree by an employee’s employment” — s5B.</p>	<p>Comcare: To a significant degree (for diseases) — s5B, with matter to be taken into account being set out in a non-exclusive list and with ‘significant’ being defined as “substantially more than material”.</p>
<b>C’wealth Seacare</b>	<p>“. . . a physical or mental injury arising out of, or in the course of, the employee’s employment . . .”, or  ‘... an aggravation of a physical or mental injury (other than a disease) ...’ — s3.</p>	<p>To a material degree (for diseases) — s10(1).</p>
<b>C’wealth DVA</b>	<p>under “Definition of injury etc.” —  Refer s27, s29(1), s29(2) and s30 of MRCA.  1. ‘...any physical or mental injury (including the recurrence of a physical or mental injury).’ or (being a disease) ‘...  a) any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development), or  b) the recurrence of such an ailment, disorder, defect or morbid condition’:  <ul style="list-style-type: none"> <li>• resulted from an occurrence that happened whilst rendering service</li> <li>• arose out of, or was attributable to, any service rendered</li> <li>• due to an accident not occurring or a disease not being contracted but for rendering service while a member; or but for changes in the person’s environment consequent upon rendering defence service while a member</li> <li>• resulted from an accident that occurred whilst travelling, while a member rendering peacetime service but otherwise than in the course of duty, on a journey to a place for the purpose of performing duty; or away from a place of duty upon having ceased to perform duty, and/or</li> <li>• arising from treatment provided by the Commonwealth.</li> </ul> 2. (being an aggravation of an injury, or its signs and symptoms) ‘... the aggravation of a physical or mental injury.’ or (being an aggravation of a disease, or its signs and symptoms) ‘...the aggravation of such an ailment, disorder, defect or morbid condition:’  <ul style="list-style-type: none"> <li>• contributed to in a material degree by, or was aggravated by, any defence service rendered by the person while a member after he or she sustained the injury or contracted the disease, and/or</li> <li>• aggravated by treatment provided by the Commonwealth.</li> </ul> </p>	<ul style="list-style-type: none"> <li>• Minimum material contribution required (“arose out of, or was attributable to”) — MRCA, s27b and s27c</li> <li>• In a material degree (for aggravations only) — MRCA, s27d and s30.</li> </ul>
<b>New Zealand</b>	<p>A work-related personal injury is a personal injury that a person suffers:  a) while he or she is at any place for the purposes of his or her employment — s28.</p>	<p>Not required, except for work-related gradual process, disease, or infection suffered by the person — s20(2)(e).</p>

# Permanent Impairment

## Definition of Permanent Impairment

A prerequisite to determining the level of permanent impairment is the understanding that impairment should not be determined until the claimant has reached a point of maximum medical improvement. This is the point at which the impairment has become static, or is not likely to remit despite medical treatment.

In addition to the principles of assessment contained in the American Medical Association (AMA) Guides, scheme legislation also provides substantial guidance on how to determine whether or not an impairment is permanent. Table 3.10 lists the legislative definitions of permanent impairment and also the criteria by which an injury is judged to be permanent.

## Permanent Impairment Guidelines

Each of the schemes substitute or remove sections of their respective editions of the AMA Guide. The necessity for these modifications is primarily due to differences in Australian and US clinical practice, but they are sometimes also the result of differences in legislative processes.

Table 3.11 illustrates the particular approach taken by the various schemes to substitute or remove assessment criteria from the Guide.

## Discounting of prior conditions

Most schemes require that where a pre-existing non-compensable condition exists, the assessing doctor must discount this pre-existing condition before making a final assessment of impairment. However, if the deductible portion is difficult or costly to determine, schemes may designate a nominal amount for this purpose or in some instances, accept complete liability for the injury. Table 3.12 lists the discounting provisions under each scheme.

**Table 3.10: Statutory definitions of permanent and impairment and criteria for determining whether impairment is permanent**

Definition of 'permanent' and 'impairment'		Statutory criteria for determining whether an impairment is permanent
<b>New South Wales</b>	Assessments are only to be conducted when the medical assessor considers that the degree of permanent impairment of the injured worker is fully ascertainable. The permanent impairment will be fully ascertainable where the medical assessor considers that the person has attained maximum medical improvement. This is considered to occur when the worker's condition has been medically stable for the previous three months and is unlikely to change by more than 3% Whole Person Impairment in the ensuing 12 months with or without further medical treatment (i.e. further recovery or deterioration is not anticipated).	s65 and s65A of the <i>Workers Compensation Act 1987</i> .
<b>Victoria</b>	s91(1A) — <i>Accident Compensation Act 1985</i> : Despite anything to the contrary in the AMA Guides, an assessment under ss(1) of the degree of impairment resulting from an injury must be made — (a) after the injury has stabilised; and (b) subject to ss(7), based on the worker's current impairment as at the date of the assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the injury — s91(1B) <i>Accident Compensation Act 1985</i> . The AMA Guides apply in respect of an assessment under 3.3d of Chapter 3 of the AMA Guides as if the following were omitted — "with the Injury Model, surgery to treat an impairment does not modify the original impairment estimate, which remains the same in spite of any changes in signs or symptoms that may follow the surgery and irrespective of whether the patient has a favourable or unfavourable response to treatment".	Other than as provided by AMA 4 there is no legislative guidance as to when an impairment becomes permanent.
<b>Queensland</b>	<i>Workers' Compensation and Rehabilitation Act 2003</i> — s38 Meaning of permanent impairment: A permanent impairment, from injury, is an impairment that is stable and stationary and not likely to improve with further medical or surgical treatment. s37 Meaning of impairment — An impairment from injury is a loss of, or loss of efficient use of, any part of a worker's body.	<i>Workers' Compensation and Rehabilitation Act 2003</i> : s179 Assessment of permanent impairment <ul style="list-style-type: none"> <li>• An insurer may decide, or a worker may ask the insurer, to have the worker's injury assessed to decide if the worker's injury has resulted in a degree of permanent impairment.</li> <li>• The insurer must have the degree of permanent impairment assessed — (a) for industrial deafness — by an audiologist; or (b) or a psychiatric or psychological injury — by a medical assessment tribunal; or (c) or another injury — by a doctor.</li> <li>• The degree of permanent impairment must be assessed in the way prescribed under a regulation and a report must be given to the insurer stating — (a) the matters taken into account, and the weight given to the matters, in deciding the degree of permanent impairment; and (b) any other information prescribed under a regulation.</li> </ul> <i>Workers' Compensation and Rehabilitation Regulation 2003</i> : <ul style="list-style-type: none"> <li>• Division 3, Entitlement to compensation for permanent impairment, and</li> <li>• Schedule 2, Table of injuries.</li> </ul>
<b>Western Australia</b>	No statutory definition. s146A (1) notes that a worker's degree of impairment is to be evaluated, as a percentage in accordance with the WorkCover Guides for the Evaluation of Permanent Impairment.	No statutory criteria for determining whether impairment is permanent — this is based on medical opinion in accordance with WorkCover Guides for the Evaluation of Permanent Impairment. The Guides are based on AMA 5 and the New South Wales Guides for the Evaluation of Permanent Impairment.



Definition of 'permanent' and 'impairment'		Statutory criteria for determining whether an impairment is permanent
<b>South Australia</b>	<p>The WorkCover <a href="#">Guidelines for the Evaluation of Permanent Impairment</a> state: "The meaning given to the word 'permanent' in various decisions of the courts includes: a) for a long and indeterminate time but not necessarily forever b) more likely than not to persist in the foreseeable future."</p> <p>"The permanent impairment will be fully ascertainable where the assessor considers the worker has attained maximum medical improvement. This is generally considered to occur when the worker's condition has been medically stable for the previous three months and is likely to be stable for the foreseeable future, with or without further medical treatment (i.e., further recovery or deterioration is not anticipated, but can include temporary fluctuations)."</p>	<p><i>Workers Rehabilitation and Compensation Act 1986</i> — s43A(2) An assessment:</p> <p>a) must be made in accordance with the WorkCover Guidelines, and  b) must be made by a legally qualified medical practitioner who holds a current accreditation issued by the Corporation for the purposes of this section.</p>
<b>Tasmania</b>	<p>The WorkCover Tasmania Guidelines state:</p> <p>" it must be shown that the problem has been present for a period of time, is static, well stabilised, and is unlikely to change substantially regardless of treatment."</p> <p><a href="#">Guidelines for the Assessment of Permanent Impairment Version 3.pdf</a></p> <p>However where impairment assessment is a prerequisite for access to common law, and where strict time limits apply, a medical assessor may undertake an assessment where the impairment does not meet the definition of 'permanent' to verify that the level of impairment will not be less than the statutory threshold. Under amendments which commenced on 1 July 2010, the threshold for access to common law is 20% WIP.</p>	No statutory criteria.
<b>Northern Territory</b>	<p>s70 of the <i>Workers Rehabilitation and Compensation Act</i> defines permanent impairment as:</p> <p>"permanent impairment means an impairment or impairments assessed in accordance with the prescribed guides, as being an impairment or combination of impairments of not less than 5% of the whole person".</p> <p><a href="#">Permanent Impairment.</a></p>	<p><i>Workers Rehabilitation and Compensation Act</i> Regulations, regulation 9 prescribes the AMA 4th edition.</p> <p>Other than as provided by AMA 4 there is no legislative guidance as to when an impairment becomes permanent.</p>
<b>Australian Capital Territory</b>	<p>s51 <i>Workers Compensation Act 1951</i> is based on the concept of loss arising from a compensable injury. "Loss" is defined to mean loss of a thing or permanent loss of use or efficient use of the thing. The definition also includes permanent musculoskeletal impairment and loss, damage, impairment, disfigurement or disease lists in Schedule 1 of the <i>Workers Compensation Act 1951</i>.</p>	Part 4.4 <i>Workers Compensation Act 1951</i> .
<b>C'wealth Comcare</b>	<p><i>Safety, Rehabilitation and Compensation Act (1988)</i></p> <p>s4 — Permanent means likely to continue indefinitely.</p> <p>Impairment means the loss, the loss of the use, or the damage or malfunction, of any part of the body or of any bodily system or function or part of such system or function.</p>	<p><i>Safety, Rehabilitation and Compensation Act (1988)</i> — s24(2)</p> <p>For the purpose of determining whether an impairment is permanent, Comcare shall have regard to:</p> <p>a) the duration of the impairment  b) the likelihood of improvement in the employee's condition  c) whether the employee has undertaken all reasonable rehabilitative treatment for the impairment, and  d) any other relevant matters.</p>

Definition of 'permanent' and 'impairment'		Statutory criteria for determining whether an impairment is permanent
<b>C'wealth Seacare</b>	<p><i>Seafarers Rehabilitation and Compensation Act 1992</i> — s3</p> <p>Impairment means the loss, the loss of the use, or the damage or malfunction, of any part of the body or of the whole or part of any bodily system or function.</p> <p>Permanent means likely to continue indefinitely.</p>	<p><i>Seafarers Rehabilitation and Compensation Act 1992</i> — s39(2)</p> <p>For the purpose of determining whether an impairment is permanent, the employer must have regard to the following matters: a) the duration of the impairment b) the likelihood of improvement in the employee's condition c) whether the employee has undertaken all reasonable rehabilitative treatment for the impairment, or d) any other relevant matters.</p>
<b>C'wealth DVA</b>	<p>Permanent means likely to continue indefinitely — s68(1)(b)(ii).</p> <p>Impairment, in relation to a person, means the loss, the loss of the use, or the damage or malfunction, of any part of the person's body, of any bodily system or function, or of any part of such a system or function — s5.</p>	<p>Deciding whether an impairment is likely to continue indefinitely — s73.</p> <p>For the purposes of subparagraph 68(1)(b)(ii) and subparagraphs 71(1)(b)(ii) and (2)(a)(ii), in deciding whether an impairment suffered by a person is likely to continue indefinitely, the Commission must have regard to:</p> <ul style="list-style-type: none"> <li>a) the duration of the impairment, and</li> <li>b) the likelihood of improvement in the one or more service injuries or diseases concerned, and</li> <li>c) whether the person has undertaken all reasonable rehabilitative treatment for the impairment, and</li> <li>d) any other relevant matters.</li> </ul>
<b>New Zealand</b>	<p>AC Act 2001 defines 'impairment as "a loss, a loss of use, or derangement of any body part, organ system or organ function."</p>	<p>Requires permanence and stability of condition being assessed by a medical practitioner after two years since the date of injury, a medical practitioner certifying that the claimant's condition has not stabilised, but it is likely that there is permanent impairment resulting from the injury.</p>

Table 3.11: Permanent impairment guides

	Edition of AMA	Format	Substituted/removed	Authorisation of the guide
<b>New South Wales</b>	5th Edition	Modifier <sup>1</sup>	<p>WorkCover Guides for the Evaluation of Permanent Impairment modify several Chapters in AMA5.</p> <p>Removed: Chapter18 Pain.</p> <p>Substituted:</p> <ul style="list-style-type: none"> <li>• AMA4 — Vision</li> <li>• Chapter11 WorkCover Guides for the Evaluation of PI 3rd Edition Psychiatric and Psychological Disorders, and</li> <li>• Evaluation of Permanent Impairment due to Hearing Loss adopts the methodology indicated in the WorkCover guides (Chapter 9) with some reference to AMA5 (Chapter11, pp 245–251), but uses National Acoustic Laboratory (NAL) Tables from the NAL Report No 118, Improved Procedure for Determining Percentage Loss of Hearing, January 1988.</li> </ul>	s376 of the <i>Workplace Injury Management And Workers Compensation Act 1998</i> .
<b>Victoria</b>	4th Edition	Designator <sup>2</sup>	<p>Statutory removal: Chapter 15 Pain.</p> <p>Statutory Guideline Substitutions:</p> <p>Chapter 9 s9.1a Hearing replaced with the Improved Procedures for Determination of Percentage Loss of Hearing (1988 Edition or later prescribed edition).</p> <p>Chapter 14 Mental and Behavioural Disorders replaced with The Guide to the Evaluation of Psychiatric Impairment for Clinicians.</p> <p>Omit from s3.3d of Chapter 3: “with the Injury Model, surgery to treat an impairment does not modify the original impairment estimate, which remains the same in spite of any changes in signs or symptoms that may follow the surgery and irrespective of whether the patient has a favourable or unfavourable response to treatment”.</p> <p>Replaced with: the degree of impairment resulting from an injury must be made after the injury has stabilised and based on the worker’s current impairment as at the date of the assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the injury.</p> <p>Specified assessments of spinal impairment are to specify the whole person values derived in accordance with s3.3 of Chapter 3 of the AMA Guides.</p> <p>Statutory Guideline Extensions:</p> <p>Impairment Assessment in Workers with Occupational Asthma.</p> <p>Clinical Guidelines to the Rating of Impairments arising from Infectious Occupational Diseases.</p>	Sections 91(6), (6A), (6B) and (7AA) <i>Accident Compensation Act 1985</i> .
<b>Queensland</b>	4th Edition	Modifier <sup>1</sup>	<p>For visual injuries use the Royal Australian and New Zealand College of Ophthalmologists (RANCO) Eye Guide together with the Table of injuries part 3.</p> <p>For hearing loss, use National Acoustics Laboratories (NAL) Report No. 118 together with part 3 of the Table of Injuries.</p> <p>For all other injuries use the methodology of the AMA4, and then determine the interaction between the Table of injuries and the appropriate assessment methodology eg. RANCO Eye Guide, NAL Report 118 or AMA Guides.</p>	Workers’ Compensation and Rehabilitation Regulation 2003.
<b>Western Australia</b>	5th Edition.	Modifier <sup>1</sup>	<p>Removed: Chapter 18 AMA5 regarding assessment of pain is excluded.</p> <p>Substituted:</p>	<i>Workers’ Compensation and Injury Management Act 1981</i> .

	Edition of AMA	Format	Substituted/removed	Authorisation of the guide
			<ul style="list-style-type: none"> <li>Chapter 14 AMA5 — Mental and behavioural disorder replaced with chapter in WorkCover WA Guides on Psychiatric Impairment Rating Scale (PIRS)</li> <li>Chapter 18 AMA5 regarding assessment of pain is excluded</li> <li>Vision — based on AMA4, and</li> <li>Hearing loss — continues to be assessed based on s24A and s31E and Schedule 7 of the <i>Workers' Compensation and Injury Management Act 1981</i>.</li> </ul>	<p>s146R WorkCover Guides.</p> <p>WorkCover WA may issue directions with respect to the evaluation of degree of impairment:</p> <ol style="list-style-type: none"> <li>The directions, and any amendment of them, are to be developed in consultation with an advisory committee appointed under s100A for the purposes of this section</li> <li>The directions may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time, and</li> <li>s41, s42, s43 and s44 of the Interpretation Act 1984 apply to the directions as if they were regulations.</li> </ol>
South Australia	5th Edition	Modifier <sup>1</sup>	<p>Vision assessments based on AMA4 with some reference to AMA5, but uses National Acoustic Laboratory (NAL) tables from the NAL report No 118, Improved procedure for determining percentage loss of hearing, January 1988.</p> <p>Pain (chapter 18, AMA 5) and Mental and Behavioural Disorders (chapter 14, AMA5) are omitted as the Act excludes entitlement for psychiatric impairment. (<a href="#">Refer to Development of the WorkCover Guidelines.1.12, of the WorkCover Guidelines for the Evaluation of Permanent Impairment</a>).</p>	The WorkCover Guidelines are published in the South Australian Government Gazette under s43A(3) of the <i>Workers Rehabilitation and Compensation Act 1986</i> .
Tasmania	4th Edition	Modifier <sup>1</sup>	<p>WorkCover Tasmania Guidelines modify several chapters in AMA4.</p> <p>Removed: Chapter 15 Pain.</p> <p>Substituted:</p> <ul style="list-style-type: none"> <li>Chapter 7 of WorkCover Tasmania Guides (Mental and Behavioural Disorders) incorporating the Psychiatric Impairment Rating Scale (PIRS) is substituted for chapter 14 AMA4</li> <li>evaluation of hearing impairment adopts the methodology indicated in chapter 6 of WorkCover Tasmania Guides including the use of the National Acoustic Laboratory (NAL) Tables, Report No 118, Improved Procedure for Determining Percentage Loss of Hearing, January 1988, and</li> <li>guidelines (and legislation) require the level of binaural hearing impairment to be converted to WPI.</li> </ul>	
Northern Territory	4th Edition	Designator <sup>2</sup>	N/A	<i>Workers Rehabilitation and Compensation Act</i> (s70 and regulation 9).
Australian Capital Territory	5th Edition	Standalone (authorised by the Regs).	<p>WorkCover Guides for the Evaluation of Permanent Impairment (3rd Ed) modify several Chapters in AMA5 removed: Chapter 18 Pain. Vision. Chapter 14 Mental and Behavioural Disorders.</p> <p>Substituted:</p> <ul style="list-style-type: none"> <li>AMA4 — Vision, and</li> <li>Chapter 11 — Psychiatric and Psychological Disorders.</li> </ul> <p>Evaluation of Permanent Impairment due to Hearing Loss adopts the methodology indicated in the WorkCover guides (Chapter 9) with some reference to AMA5 (Chapter 11, pp 245–251), but uses (NAL) Tables from the NAL Report No 118, Improved Procedure</p>	Reg 5(1)(b) of the Workers Compensation Regulation 2002 allows the Minister to approve medical guidelines.

	Edition of AMA	Format	Substituted/removed	Authorisation of the guide
			for Determining Percentage Loss of Hearing, January 1988.	
<b>C'wealth Comcare</b>	5th Edition	Stand-alone <sup>3</sup>	<p>Removed: Chapter 18 (Pain).  Substituted in whole:  Chapte r12 (The Visual System), and  Chapter 14 (Mental and Behavioural Disorders).  Substituted in part:  Chapter 11 (Ear, Nose, Throat, and related Structures).  Comcare's Guide to the Assessment of the Degree of Permanent Impairment (Ed 2.1), lists substitutions made to AMA5 in Principles of Assessment (full text of the relevant section contained below).  Part 1, Principles of Assessment:  12. Exceptions to the use of Part 1 of this Guide.  An assessment is not to be made using the American Medical Association's Guides to the Evaluation of Permanent Impairment for:</p> <ul style="list-style-type: none"> <li>• mental and behavioural impairments</li> <li>• impairments of the visual system</li> <li>• hearing impairment, or</li> <li>• chronic pain conditions except in the case of migraine or tension headaches.</li> </ul>	<p><i>Safety, Rehabilitation and Compensation Act (1988)</i>  s24(5)  Comcare shall determine the degree of permanent impairment of the employee resulting from an injury under the provisions of the approved Guide.  s28(1)  Comcare may, from time to time, prepare a written document, to be called the "Guide to the Assessment of the Degree of Permanent Impairment", setting out:</p> <p>a) criteria by reference to which the degree of the permanent impairment of an employee resulting from an injury shall be determined</p> <p>b) criteria by reference to which the degree of non-economic loss suffered by an employee as a result of an injury or impairment shall be determined, and</p> <p>c) methods by which the degree of permanent impairment and the degree of non-economic loss, as determined under those criteria, shall be expressed as a percentage.</p>

	Edition of AMA	Format	Substituted/removed	Authorisation of the guide
<b>C'wealth Seacare</b>	5th Edition	Stand-alone	<p>Removed: Chapter 18 (Pain).</p> <p>Substituted in whole: Chapter 12 (The Visual System), and Chapter 14 (Mental and Behavioural Disorders).</p> <p>Substituted in part: Chapter 11 (Ear, Nose, Throat, and related Structures).</p> <p>Seacare's Guide to the Assessment of the Degree of Permanent Impairment (2nd Ed), lists substitutions made to AMA5 in Principles of Assessment (full text of the relevant section contained below).</p> <p>Principles of Assessment: 12. Exceptions to the use of of this Guide .</p> <p>An assessment is not to be made using the AMA Guides to the Evaluation of Permanent Impairment for:</p> <ul style="list-style-type: none"> <li>• mental and behavioural impairments</li> <li>• impairments of the visual system</li> <li>• hearing impairment, or</li> <li>• chronic pain conditions except in the case of migraine or tension.</li> </ul>	<p><u><i>Seafarers Rehabilitation and Compensation Act (1992)</i></u></p> <p>s39(5)</p> <p>The employer under this section must determine the degree of permanent impairment of the employee resulting from an injury under the provisions of the approved Guide.</p> <p>s42(1)</p> <p>The Authority may, from time to time, prepare a written document, to be called the "Guide to the Assessment of the Degree of Permanent Impairment", setting out:</p> <ol style="list-style-type: none"> <li>a) criteria by reference to which the degree of the permanent impairment of an employee resulting from an injury must be determined; and</li> <li>b) criteria by reference to which the degree of non-economic loss suffered by an employee as a result of an injury or impairment must be determined; and</li> <li>c) methods by which the degree of permanent impairment and the degree of non-economic loss, as determined under those criteria, must be expressed as a percentage.</li> </ol>
<b>C'wealth DVA</b>	4th Edition	Stand alone <sup>4</sup>	Substituted in whole.	<p>Impairment points of a person means the points worked out for the person using the guide determined under s67 — s5.</p> <p>The Commission may determine, in writing, a guide setting out:</p> <ol style="list-style-type: none"> <li>a) criteria to be used in deciding the degree of impairment of a person resulting from a service injury or disease, and</li> <li>b) methods by which the degree of that impairment can be expressed in impairment points on a scale from 0 to 100, and</li> <li>c) criteria to be used in assessing the effect of a service injury or disease on a person's lifestyle, and</li> <li>d) methods by which the effect of a service injury or disease on a person's lifestyle can be expressed as a numerical rating, and</li> <li>e) methods by which the impairment points of a person, and the effect on a person's lifestyle, from a service injury or disease can be used to determine the compensation payable to the person under</li> </ol>

	Edition of AMA	Format	Substituted/removed	Authorisation of the guide
				this Part by reference to the maximum compensation that can be payable to a person under this Part. — s67(1).
<b>New Zealand</b>	4th Edition	Designator <sup>2</sup> Modifier <sup>1</sup>	AMA4. ACC User Handbook. This takes precedence over the AMA4.	<p>Injury Prevention, Rehabilitation, and Compensation (Lump Sum and Independence Allowance) Regulations 2002.</p> <p>Assessment tool for assessing eligibility for lump sum payments and independence allowance.</p> <p>Assessment of a person's whole-person impairment, for the purposes of determining the person's eligibility to receive lump sum compensation or an independence allowance, must be carried out by an assessor using the assessment tool prescribed by subclause (2).</p> <p>(2) The assessment tool comprises:</p> <p>a) the AMA Guides to the Evaluation of Permanent Impairment (Fourth Edition), and b) the ACC User Handbook to AMA4.</p> <p>(3) The ACC User Handbook to AMA4 prevails if there is a conflict between it and the AMA4 Guides to the Evaluation of Permanent Impairment.</p>

1. Modifier refers to an edition of the AMA Guide that is attached with additional instructions for assessors and which acts to modify the AMA Guides or chapters. Schemes applying this modified approach publish separate guidelines to clarify the key points of divergence for doctors. The authority for these documents is contained in the legislation or its associated regulations.
2. Designator refers to an edition of the AMA Guide which is designated by legislation as the Guide to be followed. Depending on the particular scheme, the designated Guide may also be a modifier (see above).
3. Unlike other schemes, Comcare amalgamates modifications to AMA5 (as noted in this table) in a stand-alone document known as the Guide to the Assessment of the Degree of Permanent Impairment. s28 of the *Safety, Rehabilitation and Compensation Act (1988)* is also unique in that it does not designate the use of AMA produced guidelines for assessment purposes.
4. GARP V (M) does not allow re course to the AMA Guides in the event that an impairment cannot be measured under GARP V (M).

Table 3.12: Discounting of prior conditions

Threshold test		Waiting period	Permits discounting?
<b>New South Wales</b>	<p>For exempt workers: Police officers, fire fighters, paramedics, volunteer bush fire fighters or emergency services volunteers, and workers injured while working in or around a coal mine:</p> <p>&gt;0% WPI, except for:</p> <ul style="list-style-type: none"> <li>15% WPI for psychiatric and psychological impairment, and</li> <li>6% binaural hearing loss for hearing loss claims.</li> </ul> <p>Entitlement to pain and suffering payment:</p> <ul style="list-style-type: none"> <li>10% WPI for physical injuries, and</li> <li>15% WPI for psychiatric and psychological injuries.</li> </ul> <p>Entitlement to claim under Common Law: 15% WPI.</p> <p>All other workers for claims made on and from 19 June 2012:</p> <p>&gt;10% WPI, except for:</p> <ul style="list-style-type: none"> <li>15% WPI for psychiatric and psychological impairment.</li> </ul> <p>Entitlement to claim under Common Law: 15% WPI.</p>	No waiting period.	Yes
<b>Victoria</b>	<p>10% WPI (5% for Chapter 3 musculoskeletal impairments with a date of injury on or after 2 December 2003).</p> <p>10% WPI other than for psychiatric impairment (and additional 10% WPI for further hearing loss).</p> <p>30% WPI for psychiatric impairment — not arising secondary to physical injury.</p>	12 months (except gradual process hearing loss injury).	Apportionment
<b>Queensland</b>	<p>&gt;0% Work Related Impairment (WRI), generally.</p> <p>5% WRI for hearing loss (s125).</p> <p>15% WRI + demonstrated eligibility to qualify for gratuitous care entitlement (s193).</p> <p>30% WRI to qualify for additional lump sum entitlement (s192).</p>	No waiting period.	Yes
<b>Western Australia</b>	<p>&gt;0% WPI, except for:</p> <p>10% WPI for initial noise induced hearing loss (NIHL) and 5% for subsequent NIHL.</p>	No waiting period.	—
<b>South Australia</b>	5% WPI.	Can't be assessed until the worker has attained maximum medical improvement. This is generally considered to occur when the worker's condition has been medically stable for the previous three months and is likely to be stable for the foreseeable future, with or without further medical treatment (i.e., further recovery or deterioration is not anticipated, but can include temporary fluctuations).	Yes
<b>Tasmania</b>	<p>"5% WPI for physical injuries with the exception of loss of part or all of a finger or toe</p> <p>&gt;0% WPI for loss of all or part of a finger or toe</p> <p>10% WPI for psychiatric impairment</p>	—	—



	Threshold test	Waiting period	Permits discounting?
	5% for binaural hearing impairment caused by industrial deafness".		
<b>Northern Territory</b>	5% WPI. If the impairment is 5–14% WPI, the compensation payable is calculated on a sliding scale. Impairments of 15– 84% WPI attract a benefit equal to the actual percentage given. >85% WPI receives maximum entitlement.	No waiting period.	Apportionment
<b>Australian Capital Territory</b>	0% (no threshold). 6% threshold for hearing loss (boilermaker's deafness).	Two years from DOI or earlier if worker has leave from the Magistrates Court or the Injury has stabilised. Injury is taken to have stabilised if the worker has returned to pre-injury weekly hours for a period of at least three months.	Yes
<b>C'wealth Comcare</b>	10% WPI. 5% binaural hearing. >0% Finger/toe, taste/smell. Must qualify for PI to qualify for Non-economic loss payment.	No waiting period.	Yes
<b>C'wealth Seacare</b>	10% WPI. 10% hearing. >0% Finger/toe, taste/smell. Must qualify for PI to qualify for Non-economic loss payment.	No waiting period.	Yes
<b>C'wealth DVA</b>	Initial compensation — 10 impairment points (IP). 5 IPs hearing, fingers, toes, taste, and smell. Additional compensation — 5 IPs.	No waiting period.	Yes — apportionment.
<b>New Zealand</b>	10%	Independence allowance: Claimant suffered personal injury on or after 1 April 1974. At least one year after the date of the injury or condition has stabilised.  Lump sums: Claimant suffered personal injury on or after 1 April 2002. At least 2 years after day of the injury or condition stabilised.	Yes — Apportionment.

## Exclusionary Provisions

### Exclusionary provisions — general

In most jurisdictions workers' compensation legislation contains exclusionary provisions. These provisions set out certain circumstances in which workers' compensation will be denied. Exclusionary provisions apply to ensure that people who exhibit reckless or wilful behaviour in the workplace are excluded from receiving workers' compensation benefits. If an injury is caused by the serious and wilful misconduct of a worker, but results in death or serious and permanent impairment, workers' compensation will usually be payable. Table 3.13 shows the general exclusionary provisions in each jurisdiction.

### Exclusionary provisions for psychological injuries

Statutory threshold requirements for psychological injuries vary significantly from physical injuries. To be eligible for compensation, the claimant of a psychological injury must be able to demonstrate that the injury was not related to any reasonable action taken by their employer in relation to a dismissal, retrenchment, transfer, performance appraisal, demotion, disciplinary action or deployment. In addition to these criteria, the claimant must also meet the designated impairment threshold for psychological injury. There are also significant differences in the way in which each jurisdiction assesses psychological impairment. Table 3.14 lists the exclusionary provisions for psychological injuries.

**Table 3.13: Exclusionary provisions (general)**

Exclusionary provisions	
<b>New South Wales</b>	<p>If it is proved that an injury to a worker is solely attributable to the serious and wilful misconduct of the worker, compensation is not payable in respect of that injury, unless the injury results in death or serious and permanent disablement — s14(2), 1987 Act.</p> <p>No compensation is payable:</p> <ul style="list-style-type: none"> <li>• in respect of an injury (other than a disease injury) unless the employment concerned was a substantial contributing factor to the injury. Note: In the case of a disease injury, the worker's employment must be the main contributing factor. See s4 — 1987 Act, s9A(1), or</li> <li>• in respect of any injury to or death of a worker caused by an intentional self-inflicted injury — s14(3), 1987 Act.</li> </ul>
<b>Victoria</b>	<p>If it is proved that an injury to a worker (whether or not intended to be inflicted) was deliberately or wilfully self-inflicted there is no entitlement to compensation in respect of that injury — s82(3).</p> <p>Subject to s82A to s82C, if it is proved that an injury to a worker is attributable to the worker's serious and wilful misconduct (including, but not limited to, being under the influence of intoxicating liquor, or a drug) there is no entitlement to compensation in respect of that injury, unless the injury results in death or severe injury (as defined) — s82(4), s82(5) and s82(10).</p> <p>s82A to s82C apply where a worker's incapacity for work results from or is materially contributed to by an injury caused by a transport accident involving a motor vehicle driven by the worker if the worker is convicted of drink or drug driving offences to reduce a worker's weekly payments for 130 weeks or to disentitle the worker to compensation under the Act if the offence is also a serious offence except where the injury results in death or severe injury.</p> <p>If it is proved that before commencing employment an employer in writing requested that the worker disclose all pre-existing injuries and diseases, and the worker did not disclose the information, compensation is not payable for any recurrence, aggravation, acceleration, exacerbation or deterioration — s82(7).</p>
<b>Queensland</b>	<p>Compensation is not payable:</p> <ul style="list-style-type: none"> <li>• for an injury sustained by a worker if the injury is intentionally self-inflicted — s129</li> <li>• for an injury caused by the serious and wilful misconduct of the worker, unless it results in death or injury and/or could result in a WRI* of 50% or more — s130(1), or</li> <li>• if the injury, caused by misconduct, could result in WRI of 50% or more arising from a psychiatric or psychological injury or combining a psychiatric or psychological injury and another injury — s130(2).</li> </ul> <p>* WRI — Work related impairment.</p>
<b>Western Australia</b>	<p>If it is proved that the injury of a worker is attributable to their:</p> <ol style="list-style-type: none"> <li>voluntary consumption of alcoholic liquor or of a drug of addiction, or both, which impairs the proper functioning of their faculties</li> <li>failure, without reasonable excuse, proof of which is on them, to use protective equipment, clothing or accessories provided by their employer for the worker's use, or</li> <li>other serious and wilful misconduct any compensation claimed in respect of that injury shall be disallowed unless the injury has serious and permanent effects or results in death — s22.</li> </ol> <p>Compensation is not payable:</p> <ul style="list-style-type: none"> <li>• to a person while participating as a contestant, engaged in training or preparation for participating, or engaged in promotional activities or engaged in regular journeys in any sporting activity — s11.</li> </ul>
<b>South Australia</b>	<p>Effect of misconduct etc — s30B.</p> <ol style="list-style-type: none"> <li>A worker who is acting in connection with, and for the purposes of, the employer's trade or business is presumed to be acting in the course of employment despite the fact that: a) the worker is acting in contravention of a statutory or other regulation applicable to the employment, or b) the worker is acting without, or in contravention of, instructions from the employer.</li> <li>However: a) a worker will not be presumed to be acting in the course of employment if the worker is guilty of misconduct or acts in contravention of instructions from the employer during the course of an attendance under s30(3), and b) a disability is not compensable if it is established on the balance of probabilities that the disability is wholly or predominantly attributable to: i. serious and wilful misconduct on the part of the worker, or ii. the influence of alcohol or a drug voluntarily consumed by the worker (other than a drug lawfully obtained and consumed in a reasonable quantity by the worker).</li> <li>ss(2)(a) does not apply in a case of death or permanent total incapacity for work and ss(2)(b) does not apply in a case of death or serious and permanent disability.</li> </ol>

Exclusionary provisions	
<b>Tasmania</b>	<p>Compensation is not payable:</p> <ul style="list-style-type: none"> <li>• if the injury is attributable to the serious and wilful misconduct of the worker, unless it results in death or serious and permanent incapacity, or</li> <li>• if the injury is an intentional self-inflicted injury, or</li> <li>• for any disease where the worker has wilfully and falsely represented themselves in writing as not having suffered from the disease — s25(2).</li> </ul> <p>The Act does not apply to any person:</p> <ol style="list-style-type: none"> <li>a) whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business, or</li> <li>b) who is an outworker, or</li> <li>c) who is a domestic servant in a private family, and has not completed 48 hours' employment with the same employer at the time when he suffers injury, or</li> <li>d) who is a member of the crew of a fishing boat, and is remunerated wholly or mainly by a share in the profits or gross earnings of that boat, or</li> <li>e) notwithstanding section s4D, who is participating in an approved program of work for unemployment payment under the <i>Social Security Act 1991</i> of the Commonwealth — s4(5).</li> </ol>
<b>Northern Territory</b>	<p>Compensation not payable in respect of an injury to a worker that was deliberately self-inflicted; or (not being an injury resulting in the worker's death or permanent or long term capacity) attributable to the worker's serious or wilful misconduct — s57(1).</p> <p>A worker is not entitled to compensation in respect of an injury sustained whilst driving a motor vehicle, after consuming alcoholic liquor which materially contributed to the accident and injury, or while under the influence of a drug. Where concentration of alcohol at the time of the accident was equal to 80 milligrams or more of alcohol per 100 milligrams of blood, the consumption of the alcoholic liquor shall be presumed to have materially contributed to the accident and injury, unless proven otherwise. This does not affect the entitlement to compensation if the injury results in death, or medical, surgical or rehabilitation treatment — s60.</p>
<b>Australian Capital Territory</b>	<p>Compensation is not payable if the injury to, or death of, the worker is caused by:</p> <ul style="list-style-type: none"> <li>• an intentionally self-inflicted injury — s82(2)</li> <li>• the worker's serious and wilful misconduct, unless the injury results in the death or serious and permanent disablement — s82(3). (a) A personal injury received by a worker is attributable to the serious and wilful misconduct of the worker if at the time of the injury the worker was under the influence of alcohol or prescription drugs, unless the alcohol or drug did not contribute to the injury or was not consumed or taken voluntarily — s82(4)(a); (b) A personal injury received by a worker is attributable to the serious and wilful misconduct of the worker if the injury was otherwise attributable to the serious and wilful misconduct of the worker — s82(4)(b)</li> <li>• the worker being imprisoned — s83, or</li> <li>• his or her engagement in professional sporting activity — s84.</li> </ul>
<b>C'wealth Comcare</b>	<p>Compensation is not payable in respect of:</p> <ul style="list-style-type: none"> <li>• any period during which the worker is imprisoned — s23(2)</li> <li>• any injury, disease or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment — s5A(1), reasonable administrative action defined in s5A(2)</li> <li>• a disease, if the employee, for the purposes connected with his/her employment or proposed employment has made a wilful and false representation that he/she did not suffer, or had not previously suffered, from that disease — s7(7)</li> <li>• an injury that is intentionally self-inflicted — s14(2)</li> <li>• an injury that is caused by the serious and wilful misconduct of the worker including under the influence of alcohol or a non-prescribed drug, but is not intentionally self-inflicted, unless the injury results in death, or serious and permanent impairment: — s14(2) and s14(3), or</li> <li>• if the employee sustains an injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury — s6(3).</li> </ul>
<b>C'wealth Seacare</b>	<p>Compensation is not payable in respect of:</p> <ul style="list-style-type: none"> <li>• any period during which the employee is imprisoned — s38(3)</li> <li>• an injury that is intentionally self-inflicted — s26(2)</li> <li>• any injury, disease or aggravation suffered as a result of reasonable disciplinary action taken against the employee, or failure to by the employee to obtain a promotion, transferor benefit in connection with his or her employment — s3 definition of Injury</li> <li>• an injury caused by the serious and wilful misconduct of the worker including under the influence of alcohol or a non-prescribed drug, unless the injury results in death, or serious and permanent impairment — s12 and s26(3)</li> <li>• where an employee made a wilful and false representation that he/she suffered from a disease or an aggravation of a disease — s10(7), or</li> <li>• if the employee sustains an injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury — s9(4).</li> </ul>

Exclusionary provisions	
<b>C'wealth DVA</b>	<p>Compensation is not payable in respect of:</p> <ul style="list-style-type: none"> <li>• an injury or disease that results from the person's serious default or wilful act except if the injury or disease results in a serious and permanent impairment — MRCA s32</li> <li>• an injury or disease that results from reasonable and appropriate counselling or failure to obtain a promotion, transfer or benefit in relation to a person's service as a member — MRCA s33</li> <li>• a wilful and false representation in connection with service or proposed service that not suffering the injury or disease — MRCA s34</li> <li>• an injury, disease, or death that results from a substantial delay commencing journey, routes that are not reasonably direct, and substantial interruptions to journeys — MRCA s35, or</li> <li>• injury, disease, or death that results from the use of tobacco products — MRCA s36.</li> </ul>
<b>New Zealand</b>	<p>Compensation is not payable:</p> <ul style="list-style-type: none"> <li>• where the injury or death is due to suicide or wilfully self-inflicted injury — s119</li> <li>• where the claimant became entitled to it because of the death of another person and they have been convicted in New Zealand or another country of the murder of the person — s120</li> <li>• where the claimant is in prison — s121, or</li> <li>• where the claimant was injured committing an offence for which they are imprisoned and that offence is punishable by a maximum term of imprisonment of 2 years or more — s122.</li> </ul>

Table 3.14: Exclusionary provisions for psychological injuries

Exclusionary provisions for psychological injuries	Impairment threshold	Diagnostic methodology of assessment
<p><b>New South Wales</b></p> <p>“No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.” — s11A1, 1987 Act.</p> <p>“(1) No compensation is payable under this Division in respect of permanent impairment that results from a secondary psychological injury.</p> <p>(2) In assessing the degree of permanent impairment that results from a physical injury or primary psychological injury, no regard is to be had to any impairment or symptoms resulting from a secondary psychological injury.</p> <p>(3) No compensation is payable under this Division in respect of permanent impairment that results from a primary psychological injury unless the degree of permanent impairment resulting from the primary psychological injury is at least 15%.</p> <p>Note: If more than one psychological injury arises out of the same incident, s322 of the 1998 Act requires the injuries to be assessed together as one injury to determine the degree of permanent impairment.</p> <p>(4) If a worker receives a primary psychological injury and a physical injury, arising out of the same incident, the worker is only entitled to receive compensation under this Division in respect of impairment resulting from one of those injuries, and for that purpose the following provisions apply:</p> <p>a) the degree of permanent impairment that results from the primary psychological injury is to be assessed separately from the degree of permanent impairment that results from the physical injury (despite s65(2))</p> <p>b) the worker is entitled to receive compensation under this division for impairment resulting from whichever injury results in the greater amount of compensation being payable to the worker under this Division (and is not entitled to receive compensation under this Division for impairment resulting from the other injury), and</p> <p>c) the question of which injury results in the greater amount of compensation is, in default of agreement, to be determined by the Commission.</p> <p>Note: If there is more than one physical injury those injuries will still be assessed together as one injury under s322 of the 1998 Act, but separately from any psychological injury. Similarly, if there is more than one psychological injury those psychological injuries will be assessed together as one injury, but separately from any physical injury.” s65A, 1987 Act.</p>	<p>15% WPI for a primary psychological injury.</p>	<p>Chapter 11 WorkCover Guides for the Evaluation of Permanent Impairment, using the Psychiatric Impairment Rating Scale (PIRS).</p>
<p><b>Victoria</b></p> <p>There is no entitlement to compensation in respect of an injury to a worker if the injury is a mental injury caused wholly or predominately by any one or more of the following:</p> <p>a) management action taken on reasonable grounds and in a reasonable manner by or on behalf of the worker’s employer, or</p> <p>b) a decision of the worker’s employer, on reasonable grounds, to take, or not to take any management action, or</p> <p>c) any expectation by the worker that any management action would, or would not, be taken or a decision made to take, or not to take, any management action, or</p> <p>d) an application under s81B of the <i>Local Government Act 1989</i>, or proceedings as a result of that application, in relation to the conduct of a worker who is a Councillor within the meaning of s14AA — s82(2A).</p> <p>In s82, management action, in relation to a worker, includes, but is not limited to, any one or more of the following:</p> <p>a) appraisal of the worker’s performance</p> <p>b) counselling of the worker</p> <p>c) suspension or stand-down of the worker’s employment</p> <p>d) disciplinary action taken in respect of the worker’s employment</p>	<p>30% WPI — not arising secondary to physical injury.</p>	<p><a href="#">The Guide to the Evaluation of Psychiatric Impairment for Clinicians (GEPIC).</a></p>

	Exclusionary provisions for psychological injuries	Impairment threshold	Diagnostic methodology of assessment
	e) transfer of the worker's employment f) demotion, redeployment or retrenchment of the worker g) dismissal of the worker h) promotion of the worker i) reclassification of the worker's employment position j) provision of leave of absence to the worker k) provision to the worker of a benefit connected with the worker's employment l) training a worker in respect of the worker's employment ( m) investigation by the worker's employer of any alleged misconduct: (i) of the worker; or (ii) of any other person relating to the employer's workforce in which the worker was involved or to which the worker was a witness; or (n) communication in connection with an action mentioned in any of the above paragraphs — s82(10).		
<b>Queensland</b>	An injury does not include a 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 b) the worker's expectation or perception of reasonable management action being taken against the worker, and c) action by the Authority or an insurer in connection with the worker's application for compensation. Reasonable management actions include action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker, a decision not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker's employment — s32(5).	None	AMA4
<b>Western Australia</b>	Treatment of stress for compensation purposes. Compensation is not payable for diseases caused by stress if the stress wholly or predominately arises from the worker's dismissal, retrenchment, demotion, discipline, transfer or redeployment, or the worker's not being promoted, reclassified, transferred or granted leave of absence or any other benefit in relation to employment or a worker's expectation of a matter or decision unless it is considered to be unreasonable or harsh on the part of the employer — s5(4). Treatment of secondary conditions in assessment of impairment. Secondary conditions are not included for the purposes of assessing impairment for common law, specialised retraining programs or payments of additional medical expenses. "Secondary condition" means a condition, whether psychological, psychiatric, or sexual, that, although it may result from the injury or injuries concerned, arises as a secondary, or less direct, consequence of that injury or those injuries.		WorkCover WA Guides 3 <sup>rd</sup> Ed. Psychiatric Impairment Rating Scale (PIRS).
<b>South Australia</b>	s30A — Psychiatric injuries. An injury consisting of an illness or disorder of the mind is compensable if and only if: a) the employment was a substantial cause of the injury; and b) the injury did not arise wholly or predominantly from: (i) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker; or (ii) a decision of the employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with the worker's employment; or (iii) reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment; or	N/A	N/A

	Exclusionary provisions for psychological injuries	Impairment threshold	Diagnostic methodology of assessment
	(iv) reasonable action taken in a reasonable manner under this Act affecting the worker. In addition, a permanent impairment benefit does not arise under s43 in relation to a psychiatric impairment.		
<b>Tasmania</b>	Compensation is not payable in respect of a disease which is an illness of the mind or a disorder of the mind and which arises substantially from: (i) reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline or counsel a worker or to bring about the cessation of a worker's employment (ii) a decision of an employer, based on reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with a worker's employment (iii) reasonable administrative action taken in a reasonable manner by an employer in connection with a worker's employment (iv) the failure of an employer to take action of a type referred to above in relation to a worker in connection with the worker's employment if there are reasonable grounds for not taking that action, or (v) reasonable action taken by an employer under this Act in a reasonable manner affecting a worker — s25(1A).		
<b>Northern Territory</b>	Compensation is not payable if the injury is: (a) due to reasonable disciplinary action (b) due to failure to obtain promotion, transfer or benefit, or caused as a result of reasonable administrative action taken in connection with the worker's employment — s3(1).	None	N/A
<b>Australian Capital Territory</b>	A Mental Injury (including stress) does not include a mental injury (including stress) that is completely or mostly caused by reasonable action taken, or proposed to be taken, by or on behalf of an employer in relation to the transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of a worker or the provision of an employment benefit to a worker — s4(2).	0% WPI.	—
<b>C'wealth Comcare</b>	Compensation is not payable in respect of an injury (being a disease) if the injury is a) due to reasonable administrative action taken in a reasonable manner in respect of the employee's employment s5A(1) — a non-exclusive list of what might be taken to be 'reasonable administrative action' is included at s5A(2) b) intentionally self-inflicted — s14(2) c) a disease, if the employee, for the purposes connected with his/her employment has made a wilful and false representation that he/she did not suffer, or had not previously suffered, from that disease — s7(7).	10% WPI.	Comcare Guide Edition 2.1, Chapter 5.
<b>C'wealth Seacare</b>	Compensation is not payable in respect of an injury (being a disease), if the injury is a result of reasonable disciplinary action taken against the employee, or failure by the employee to obtain a promotion, transfer or benefit in connection with his or her employment — s3.	10% WPI.	AMA Guidelines to the Evaluation of Permanent Impairment (2nd Edition), Chapter: Mental Conditions.
<b>C'wealth DVA</b>	Psychological injuries are not treated any differently than other injuries or diseases.	Initial compensation — 10 impairment points (IP).	Additional compensation — 5 IPs. <a href="#">As per Chapter 4 "Emotional and Behavioural", GARP V (M)</a>
<b>New Zealand</b>	Cover does not exist for mental injuries if the mental injury is not caused by physical injuries — s26(1)(c), the result of a sudden traumatic event — s21B, or as a consequence of certain criminal acts — s21.		



## Cross-border Provisions

Workers' compensation schemes vary significantly between jurisdictions, which can lead to confusion for employers and workers. All jurisdictions have acknowledged this and have implemented, or will implement, cross-border provisions that are based on the National Cross-Border Model developed by Heads of Workers' Compensation Authorities (HWCA). Cross-border provisions provide coverage for workers who travel to or work temporarily in different jurisdictions, as long as workers meet a 'state of connection' test.

An injured worker's state or territory of connection is determined by the following tests:

- Test A — The territory or state in which the worker usually works in that employment, or
- Test B — If not identified through (A) — the territory or state in which the worker is usually based for the purposes of that employment, or
- Test C — If not identified through (A) or (B) — the territory or state in which the employer's principal place of business in Australia is located.

If no state of connection can be determined for a worker and a worker is not entitled to compensation for the same matter under the laws of a place outside Australia, a worker's employment is connected with the state where the injury occurred.

These tests are hierarchical, so if the first test does not provide an answer, the next test is applied until the worker's status is determined. Special arrangements apply for workers on ships and a safety net also applies. Table 3.15 shows the status of implementation of the national cross-border model in each jurisdiction.

**Table 3.15: Cross border provisions**

Cross border provisions	
<b>New South Wales</b>	National cross-border model implemented on 1 January 2006. In March 2012 NSW harmonised its cross border guidance material with the national cross border guidance material.
<b>Victoria</b>	National cross-border model implemented from 1 September 2004. Effective from 1 July 2005, Victorian legislation imposed a Victorian premium liability on employers only in respect of workers who are connected with Victoria as defined.
<b>Queensland</b>	National cross-border model implemented as at 1 July 2003.
<b>Western Australia</b>	National cross-border model implemented 22 December 2004.
<b>South Australia</b>	National cross-border model commenced in South Australia on 1 January 2007. See <a href="#">chapter 3 Claims Operational Guidelines</a> and WorkCoverSA <a href="#">Guide to cross border provisions</a> .
<b>Tasmania</b>	National cross-border model implemented from December 2004.
<b>Northern Territory</b>	National cross-border model implemented from 26 April 2007.
<b>Australian Capital Territory</b>	National cross-border model implemented on 3 June 2004. Updated national guidance was implemented via subordinate legislation on 20 July 2012.
<b>C'wealth Comcare</b>	There are no formal cooperative arrangements with other jurisdictional compensation authorities as the Commonwealth scheme does not operate on a geographical basis.
<b>C'wealth Seacare</b>	State/Territory compensation schemes have no application if Seafarers Act applies.
<b>C'wealth DVA</b>	N/A
<b>New Zealand</b>	The ACC Scheme covers New Zealand residents injured outside of New Zealand if they have been or remain absent for less than six months or intend to be absent for less than six months. Additional cover can be purchased for up to 24 months.



# Chapter 4: Benefits

Once it is established that an injured worker is entitled to workers' compensation the next step is to determine the type and amount of benefits the worker is entitled to receive. The benefits an injured worker receives should assist them financially while they are recovering from their injury, as well as helping them return to their pre-injury employment in a timely, safe and durable manner through rehabilitation and other necessary support. The types of benefits that an injured worker may receive include:

- income replacement payments
- costs of medical and hospital treatment
- permanent impairment entitlements
- death entitlements, and
- other benefits.

## **Income replacement**

Income replacement payments (generally known as weekly payments) are periodic payments that are usually calculated on the basis of the worker's pre-injury earnings.

While income replacement payments aim to substitute fairly the lost earnings of an injured worker, there are limits to entitlements depending on the degree of incapacity. Income replacement payments are 'stepped down' by a percentage or to a set amount for workers who cannot earn an income because of a work related injury.

All jurisdictions index income replacement amounts notionally to keep pace with increases in average incomes, although the amounts and timing of indexation vary.

An injured worker may elect to receive a one off lump sum payment, which replaces the worker's ongoing weekly income replacement payments. This type of payment needs to be agreed by the injured worker and the insurer and can be referred to as settlement, redemption or commutation payment. There may be criteria that need to be met in order for an injured worker to receive a lump sum settlement payout. If an injured worker elects to receive a lump sum payment, the insurer's liability and weekly income replacement benefits cease, but in some jurisdictions this payment does not affect medical and like expenses.

Income replacement arrangements differ across all of the workers' compensation jurisdictions. Table 4.1 shows the income replacement arrangements in each jurisdiction.

## **Medical, hospital and other costs**

Payment of medical and hospital costs assist workers in their recovery from injury by providing necessary rehabilitation and medical services. Most workplace injuries will require some form of medical assistance and there are instances where the worker requires hospital admission due to the severity of the injury. Workers' compensation schemes cover medical, hospital and allied health expenses. In some cases payments are also made for other services such as home help, attendant care and vehicle or home modifications. Table 4.2 outlines medical, hospital and other costs by jurisdiction.

## **Permanent impairment payments**

In most cases injured workers make a full recovery from their injury, but there are instances where an injury sustained to a worker is permanent. In these situations, an injured worker may be entitled

to permanent impairment benefits, which are awarded in addition to income replacement payments. Permanent impairment payments are a lump sum payment for each impairment sustained to cover non-economic loss. Table 4.3 shows permanent impairment payments in each jurisdiction.

### **Death entitlements**

In the event that a workplace injury results in death, all jurisdictions provide access to death entitlements. A spouse or dependant of a worker who died in a work related incident may be entitled to certain payments, which can assist the family with funeral costs and ongoing living expenses. The amount and type of damages accessible vary between jurisdictions. Table 4.4 outlines death entitlements in each jurisdiction. Table 4.5 outlines the treatment of spouse and dependants for death entitlements.

### **Common Law Access**

Before the introduction of statutory workers' compensation schemes, injured workers had to sue their employers under common law to receive any benefits. Common law actions were far less restrictive than statutory schemes and could have potentially provided injured workers with larger benefits. If an injured worker had a cause of action, they were entitled to bring such an action and were entitled to a wide variety of damages, and there were no caps placed on the amount of damages they could receive. Each case was decided on its individual merits and there was no guarantee of success, unlike statutory entitlements that are fixed in law. However, with the introduction of statutory 'no-fault' workers' compensation schemes, and with the benefit of reducing costs for all parties involved, access to common law has been significantly restricted.

Some jurisdictions have:

- abolished the right to access common law, or
- introduced threshold tests, and/or
- placed restrictions on types of damages that an injured worker can receive, and/or
- placed caps on the amount of damages that can be awarded.

Despite these restrictions, some injured workers still want to pursue common law. If an injured worker elects to pursue common law, they may have to reimburse their employer or the compensation authority for any statutory benefits paid out. Table 4.6 outlines the access to common law in each jurisdiction.

### **Suspension and Cessation of benefits**

Compensation and rehabilitation of injured workers impose mutual obligations on insurers, employers and employees. Payments may be suspended or ceased if certain obligations are not met by the injured worker. Table 4.7 lists the provisions in legislation that may result in compensation being ceased or suspended until certain conditions are met.

### **Settlement of future incapacity benefits**

Some jurisdictions provide for settlement of future incapacity payments entitlements to injured workers on the basis that certain criteria are met. These payments (often referred to as redemptions or commutations) are paid out as a settlement payment by the relevant Authority, which may include provisions that the injured worker can no longer claim benefits for their injury. Table 4.8 provides information on the settlement provisions in each jurisdiction.

Table 4.1: Income replacement

	Calculation	Settlement, redemption, commutation
<p><b>New South Wales</b></p>	<p>Part 3, Div 2 (1987 Act).</p> <p>Total Incapacity:</p> <p>&lt; 26 weeks — Current Weekly Wage Rate: Under award/enterprise agreement 100%, or where no award/enterprise agreement, 80% of the average weekly earnings of the worker, excluding overtime and allowances (maximum weekly rate: \$1838.70).</p> <p>&gt; 26 weeks — The lesser of 90% of average weekly earnings or the statutory rate of \$432.50, plus the following additional amount for spouse and/or dependant children:</p> <ul style="list-style-type: none"> <li>• spouse: \$114.00</li> <li>• 1 child: \$81.50</li> <li>• 2 children: \$182.20</li> <li>• 3 children: \$301.80</li> <li>• 4 children: \$424.60, and</li> <li>• For each additional dependant child in excess of 4: \$122.50.</li> </ul> <p>Note: Calculation of current weekly earnings and computation of average weekly earnings are outlined in s42 and s43 of the <i>Workers Compensation Act 1987</i> respectively.</p> <p>Partial Incapacity:</p> <p>&lt; 26 weeks with worker not suitably employed (s38) — payment as per the total incapacity rate.</p> <p>26–52 weeks with worker not suitably employed (s38) — 80% of current weekly wage rate or the amount that would be payable for total incapacity (whichever is greater).</p> <p>&gt; 52 weeks — The maximum period for which partially incapacitated workers whose employers cannot provide suitable duties can receive special benefits is 52 weeks.</p> <p>Partial incapacity (all other circumstances): difference between the amount worker would probably have been earning were it not for the injury and the amount currently earning (or able to earn). However, cannot exceed:</p> <p>&lt; 26 weeks — Maximum weekly benefit payment of \$1838.70</p> <p>&gt; 26 weeks — The lesser of the statutory rate or 90% of average weekly earnings, and</p> <p>&gt; 104 weeks — Payments can be discontinued at the end of 104 weeks of partial incapacity if the worker:</p> <ul style="list-style-type: none"> <li>• is no longer job seeking</li> <li>• is unemployed mainly as a result of the labour market conditions, or</li> <li>• has unreasonably rejected an offer of suitable employment.</li> </ul> <p>Benefits are indexed on 1 April and 1 October each year.</p> <p>On and from 17 September 2012 for seriously injured workers (except exempt workers):</p> <ul style="list-style-type: none"> <li>• 0–13 weeks: 95% pre-injury average weekly earnings, and</li> <li>• &gt; 13 weeks: minimum of \$736.72.</li> </ul> <p>Exempt workers:</p> <ul style="list-style-type: none"> <li>• police officers, paramedics and fire fighters</li> <li>• workers injured while working in or around a coal mine</li> <li>• bush fire fighter and emergency service volunteers (Rural Fire Service, Surf Life Savers, SES volunteers), and</li> <li>• people with a dust disease claim under the <i>Workers Compensation (Dust Diseases) Act 1942</i>.</li> </ul>	<p>Commutation is a single lump sum payment to the injured worker by the scheme agent or insurer on behalf of the employer, the receipt of which brings to an immediate end all future entitlements to weekly benefits, lump sum compensation for Whole Person Impairment, hospital, medical and related treatment and rehabilitation expenses. Commutation is only available if the following pre-conditions are met:</p> <ul style="list-style-type: none"> <li>• the injured worker has a permanent impairment that is at least 15% WPI</li> <li>• compensation for that permanent impairment and, if eligible, pain and suffering has been paid</li> <li>• the worker is currently eligible for ongoing weekly benefits and must have received weekly benefits regularly and periodically during previous six months</li> <li>• it is more than two years since worker first received compensation</li> <li>• injury management and return to work opportunities have been exhausted, and</li> <li>• weekly benefits have not been stopped or reduced as a result of the worker not seeking suitable employment — s87EA, 1987 Act.</li> </ul> <p>Prior to receiving a commutation:</p> <ul style="list-style-type: none"> <li>• the worker must receive independent legal and financial advice</li> <li>• the Scheme agent or insurer, employer and worker must agree with the commutation</li> <li>• WorkCover must agree with the commutation, and</li> <li>• all agreements must be registered with the Workers' Compensation Commission — Part 3, Div 9 (1987 Act) s87F.</li> </ul> <p>There is no entitlement to commute weekly benefits for workers under the <i>Workers' Compensation (Dust Diseases) Act 1942</i> however dependant entitlements may be redeemed.</p>

Calculation		Settlement, redemption, commutation
<p><b>Victoria</b></p>	<p>Due to statutory changes to scheme on 12/11/97, benefit rates depend on date of entitlement.</p> <p>Pre 12/11/97 claims: Workers entitled to receive weekly payments — old rates apply.</p> <p>Post 05/04/10 claims —</p> <p>First 13 weeks:</p> <p>If no current work capacity: 95% of pre-injury average weekly earnings (PIAWE)* less deductible amount** or maximum (twice State average weekly earnings — \$2000), whichever is the lesser.</p> <p>If current work capacity: 95% PIAWE less deductible amount and the worker's current weekly earnings or maximum (twice State average weekly earnings — \$2000) less the worker's current weekly earnings, whichever is the lesser — s93A.</p> <p>&gt; 13 weeks:</p> <p>If no current work capacity: 80% of PIAWE less deductible amount or maximum (twice State average weekly earnings — \$2000), whichever is the lesser.</p> <p>If current work capacity: 80% of PIAWE less deductible amount and 80% of worker's current weekly earnings or maximum (twice State average weekly earnings — \$2000) less 80% current weekly earnings, whichever is the lesser — s93B.</p> <p>&gt; 52 weeks:</p> <p>Weekly payments continue as above except PIAWE is reduced as no further entitlement to shift allowance or overtime (earnings enhancements) — s5A(1A) and s5A(1B).</p> <p>&gt; 130 weeks (Note for pre 1 Jan 2005 claim = &gt; 104 weeks):</p> <p>Weekly payments can continue to be paid until retirement age (except where worker injured within or after 130 weeks' of retirement age where maximum of 130 weeks applies) as long as:</p> <ol style="list-style-type: none"> <li>the worker is likely to have no current work capacity indefinitely at 80% of PIAWE less deductible amount or maximum (twice State average weekly earnings — \$2000), whichever is the lesser — s93C, or</li> <li>the worker has a current work capacity and has returned to work at his/her maximum capacity and is working at least 15 hours per week and earning at least \$172 per week at 80% of PIAWE less deductible amount and 80% of the worker's current weekly earnings or maximum twice State average weekly earnings — \$2000) less 80% current weekly earnings, whichever is the lesser — s93CD, or</li> <li>worker is working 15 hours per week and earning at least \$172 per week and requires surgery and is incapacitated for work — worker entitled to maximum of 13 weeks of weekly payments on same basis as s93B above if worker applies more than 13 weeks after weekly payment entitlement has ceased after 130 weeks — s93CA.</li> </ol> <p>*Pre-injury average weekly earnings is defined in s5A to s5E but generally means a worker's average ordinary earnings during the 12 months prior to injury excluding any week that the worker was not actually working and not on paid leave expressed as a lump sum and any earnings enhancements (shift allowance, overtime) in that 12 months. Earnings enhancements are included in PIAWE for the first 52 weeks of weekly payments only.</p> <p>**Deductible amount is defined in s91E but generally means the total value of any ongoing employment benefits including non-pecuniary benefits such as the value of residential accommodation, motor vehicle use, health insurance and education fees.</p>	<p>A settlement of weekly payments in a lump sum is allowable in some circumstances. There are 3 separate subdivisions for voluntary settlements each with its own specific eligibility criteria — Part IV, Div 3A. The settlement is only for weekly payments and does not include reasonable medical and like expenses which continue to be paid.</p>
<p><b>Queensland</b></p>	<p>For the first 26 weeks: Workers under an industrial instrument s150(1)(a) — the greater of:</p> <ol style="list-style-type: none"> <li>85% of the worker's NWE, or</li> <li>amount payable under the worker's industrial instrument.</li> </ol> <p>Workers not under an award or agreement s151(1)(a) — the greater of:</p> <ol style="list-style-type: none"> <li>85% of NWE, or</li> <li>80% of QOTE.</li> </ol> <p>Queensland Ordinary Time Earnings (QOTE) is currently \$1330.50.</p>	<p>Liability for weekly compensation payments can be discharged by a redemption payment agreed between the insurer and worker if worker has been receiving weekly payments for at least 2 years and the worker's injury is not stable and stationary for the purpose of assessing permanent impairment — Chapter 3, Part 9, Division 7.</p> <p>After a redemption payment has been made the worker has no further entitlement to compensation for the injury, including weekly</p>

	Calculation	Settlement, redemption, commutation
	<p>Workers on contract s152(1)(a) — the greater of:</p> <p>a) 85% NWE, or b) the amount payable under the worker's contract of service.</p> <p>From the end of first 2 years to the end of the first 5 years: where a worker demonstrates that the injury could result in a work-related impairment (WRI) of more than 15% — s150(1)(c)(i), s151(1)(c)(i) and s152(1)(c)(i) — the greater of:</p> <p>a) 75% of the worker's NWE, or b) 70% of QOTE.</p> <p>Workers with WRI less than or equal to 15%, receive an amount equal to the single pension rate.</p> <p>Total amount payable for weekly benefits is \$287 605 (from 1 July 2012).</p> <p>NWE can include amounts paid to the worker regularly for overtime, higher duties, penalties and allowances. It cannot include some allowances (such as those paid for travelling, meals, education, living away from home), superannuation contributions or lump sum payments made on termination of a workers' employment for superannuation or accrued leave (s81 Workers' Compensation and Rehabilitation Regulation 2003).</p> <p>QOTE is the seasonally adjusted amount of Queensland full-time adult persons ordinary time earnings as declared by the Australian Statistician in the statistician's report about average weekly earnings published immediately before the start of the financial year (s107 <i>Workers' Compensation and Rehabilitation Act 2003</i>).</p>	<p>benefits, and medical and rehabilitation expenses.</p>
<b>Western Australia</b>	<p>A cap on weekly payments of \$2351.80 applies for the duration of claims. This amount is indexed annually (every 1 July).</p> <p>Workers whose earnings are prescribed by an industrial award:</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 \$2351.80. Overtime, bonuses or allowances are averaged over the 13 weeks before the disability occurred — Schedule 1, clause 11(3)(a).</p> <p>14th week onward — 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, any allowance paid on a regular basis as part of the worker's earnings and related to the number and pattern of hours worked but excluding overtime, bonuses or allowances. Maximum payment is \$2351.80. Subject to the cap of \$2351.80, the minimum rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant award — Schedule 1, clause 11(3)(b).</p> <p>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 disability occurred, up to a maximum of \$2351.80 — Schedule 1, clause 11(4)(a).</p> <p>14th week onward — Weekly payments 'step down' to 85% of the worker's average weekly earnings; maximum payment is \$2351.80. Minimum rate: Subject to the cap of \$2351.80, the minimum rate of weekly earnings payable under the <i>Minimum Conditions of Employment Act 1993</i> — Schedule 1, clause 11(4)(b).</p>	<p>Lump sum redemption payment for loss of future wages, medical and like expenses, as a result of a permanent total or partial incapacity.</p> <p>Criteria: worker received weekly payments for not less than 6 months, worker and employer agree to redemption and the lump sum amount, the worker will automatically waive their common law rights and the Director of Conciliation Services is satisfied the worker is aware of the consequences of redeeming their claim — s67.</p> <p>Compensation for permanent impairment is also available under Schedule 2 of the Act which lists specific compensable injuries against which a percentage of the prescribed amount is listed.</p>
<b>South Australia</b>	<p>Cap of 2 x state average weekly earnings (\$2589.40 as at 17/11/2011 and \$2604.40 as at 16/08/2012).</p> <p>If worker is partially incapacitated, their actual earnings are deducted from their income maintenance, which instead of a full wage replacement, acts as a 'top up'.</p> <p>&lt; 13 weeks — 100% of the worker's Average Weekly Earnings (AWE).</p>	<p>The <i>Workers Rehabilitation and Compensation Act 1986</i> provides for redemption of liabilities (weekly payments and/or medical expenses). One of the following legislative criteria for redemption, of weekly payments must be met:</p> <ul style="list-style-type: none"> <li>• the rate of weekly payments to be redeemed does not exceed \$30</li> </ul>

## Calculation

13–26 weeks — 90% of worker's AWE.  
 > 26 weeks — 80% of AWE.  
 > 130 weeks — Worker may be subject to a Work Capacity Review and if they have capacity to work that they are not maximising, their income maintenance may cease.

## Settlement, redemption, commutation

(indexed)

- the worker is 55 years of age or older and has no current work capacity, or
- the Workers Compensation Tribunal has determined on the basis of a joint application by the worker and the Corporation, that the continuation of weekly payments is contrary to the best interests of the worker from a psychological and social perspective.

Redemptions are voluntary and can only take place through mutual agreement between the parties.

The current position of the WorkCover Board is that there should be no redemptions. This policy only applies to the injured workers of registered employers.

Third party recovery redemptions are managed under a separate policy and must have had proceedings issued prior to 22 October 2010 to be eligible for redemption. This policy only applies to the injured workers of registered employers.

### Tasmania

s69B —

≤ 26 weeks — 100% of weekly payment i.e. the greater of NWE, or ordinary-time rate-of-pay for work engaged in immediately prior to incapacity.

NWE is the workers average weekly earnings with that employer over the previous 12 months or the period of employment if less than 12 months. Overtime is included if it was regular and would have continued to be paid if the worker was not incapacitated.

> 26 weeks to ≤ 78 Weeks:

90% of weekly payment. The Act provides that the worker is to receive 95% of the weekly payment if the employer fails to provide suitable alternative duties.

> 78 weeks — 80% of weekly payment. The Act provides that the worker is to receive 85% of the weekly payment if the employer fails to provide suitable alternative duties.

Cessation of entitlement to weekly payments depends on the worker's degree of WPI:

- 9 years if < 15% WPI
- 12 years if ≥15% WPI but < 20% WPI
- 20 years if ≥20% WPI but < 30% WPI, or
- To date of cessation of employment under s87 (65 years) if ≥ 30% WPI.

Minimum weekly payment is 70% of the basic salary (\$515.74 per week as at September 2012) or 100% of the weekly payment — whichever is the lesser amount (or pro rata equivalent) — s69B(3).

s132A

Settlements made within 2 years of the date of claim:

Settlement by agreement of outstanding entitlements to compensation made within 2 years of the date the claim was made must be approved by the Workers Rehabilitation and Compensation Tribunal (the Tribunal).

To approve a proposed agreement to settle, the Tribunal must be satisfied that:

- all reasonable steps have been taken to enable the worker to be rehabilitated, retrained or to return to work, or
- the worker has returned to work, or
- where there has been a reasonably arguable case determination, that the proposed agreement is in the best interests of the worker, or
- special circumstances in relation to the worker make rehabilitation, retraining or return to work impracticable and the proposed agreement is in the best interests of the worker.

The Tribunal must also be satisfied that the worker has received appropriate professional advice about the proposed agreement to settle and that the worker's entitlement to lump sum compensation for permanent impairment has been considered.

Settlements made after 2 years:

Agreements to settle made more than 2 years after the date the claim was made do not have to be approved by the Tribunal. However, a party can subsequently refer the agreement to the Tribunal to be reviewed and possibly set aside. Referral must be made within 3 months of the date of the agreement.

The Tribunal can set aside an agreement if it is of the opinion that:

- a party entered the agreement under duress, or
- the worker has not received appropriate advice, or
- a party was induced to enter the agreement by a misrepresentation by another party (or their agent).



	Calculation	Settlement, redemption, commutation
<b>Northern Territory</b>	<p>&lt; 26 weeks — NWE i.e. worker's normal working hours per week at hourly rate, including overtime and shift penalties (where worked in a regular and established pattern) — s64.</p> <p>&gt; 26 weeks — Whichever is the greater of:</p> <ol style="list-style-type: none"> <li>75% of NWE to a maximum of \$2012.90, or</li> <li>\$704.30 plus \$176.08 for a dependant spouse and \$88.04 for each dependant child; or 90% of NWE (whichever is the lesser) — s65(1).</li> </ol> <p>&lt; 104 weeks — Weekly benefits may reduce or cease, if the worker has been deemed to have an earning capacity, provided that suitable employment is reasonably available — s65(2)(b)(i).</p> <p>&gt; 104 weeks — Weekly benefits may reduce or cease, if the worker has been deemed to have an earning capacity, without having regard to the availability of suitable employment — s65(2)(b)(ii).</p>	<p>Commute weekly benefits into lump sum payment. Maximum 156 times NWE or 156 times AWE, whichever is greater — s74. Only for workers who are not totally incapacitated and rehabilitation is completed. Medical and like expenses are continued to be paid.</p>
<b>Australian Capital Territory</b>	<p>First 26 weeks of incapacity — Where the worker is totally incapacitated, weekly compensation is payable at the worker's average pre-incapacity earnings — s39(4)(a). Where the worker is partially incapacitated during the first 26 weeks, weekly compensation is payable calculated as the difference between:</p> <ul style="list-style-type: none"> <li>the worker's average pre-incapacity weekly earnings, and</li> <li>the average weekly amount that the worker is being paid for working or could earn in reasonably suitable employment: s39(4)(b).</li> </ul> <p>After first 26 weeks of incapacity — If the worker is totally incapacitated for any period after the 26-week period, s/he is entitled to weekly compensation equal to:</p> <ol style="list-style-type: none"> <li>100% of the worker's average pre-incapacity weekly earnings — if 100% of the worker's average pre-incapacity weekly earnings is less than the pre-incapacity floor for the worker, or</li> <li>the statutory floor — if 100% of the worker's average pre-incapacity weekly earnings is more, but 65% of those earnings is less, than the pre-incapacity floor for the worker, or</li> <li>whichever is more — if 65% of the worker's average pre-incapacity weekly earnings is more than the pre-incapacity floor for the worker — s41(1).</li> </ol> <p>If the worker is partially incapacitated for period after the 26-week period, s/he is entitled to weekly compensation equal to:</p> <ol style="list-style-type: none"> <li>100% of the worker's average pre-incapacity weekly earnings if that amount is less than the statutory floor, or</li> <li>the statutory floor if the relevant percentage of the worker's average pre-incapacity weekly earnings is less than the statutory floor, or</li> <li>the statutory ceiling if the relevant percentage of the worker's average pre-incapacity weekly earnings is more than the statutory ceiling<sup>3</sup>, or</li> <li>in any other case — the relevant percentage of the worker's average pre-incapacity weekly earnings — s42(1).</li> </ol> <p>For these purposes the "relevant percentage" is:</p> <ol style="list-style-type: none"> <li>65% if the worker is not working or works 25% of the worker's average pre-incapacity weekly hours or less, or</li> <li>75% if the worker is working more than 25% of the worker's average pre-incapacity weekly hours but not more than 50%, or</li> <li>85% if the worker is working more than 50% of the worker's average pre-incapacity weekly hours but not more than 75%, or</li> <li>95% if the worker is working more than 75% of the worker's average pre-incapacity weekly hours but not more than 85%, or</li> <li>100% if the worker is working more than 85% of the worker's average pre-incapacity weekly hours — s42(2).</li> </ol> <p>Definitions:</p>	<p>Negotiated between injured worker and employer/insurer. Schedule 1 of the Act provides a list of injuries, including for the loss of toes, taste and smell, and sets out a% rate (from 2% to 100%) of the single loss amount payable.</p> <p>Unlimited Common Law.</p> <p>Benefits may be commuted.</p>

Calculation	Settlement, redemption, commutation	
	<p>Pre-incapacity floor, for a worker, means the statutory floor that applied immediately before the initial incapacity date for the worker in relation to the injury — s41(2).</p> <p>Statutory floor, means the national minimum wage set by a national minimum wage order in an annual wage review by Fair Work Australia — s36(G)(1)</p> <p>Statutory ceiling, in relation to an amount, means 150% of AWE at the time the amount is to be paid — s42(4).</p>	
<p><b>C'wealth Comcare</b></p> <p>&lt; 45 weeks — 100% NWE which includes overtime if regular and required and penalties, with no maximum cap applied — s19(2).</p> <p>&gt; 45 weeks — s19(3).</p> <p>If not working — 75% of NWE.</p> <p>Minimum — \$425.72.</p> <p>Part II, Div 3: a) if working &gt;0% to &lt;=25% of pre injury hours — 80% of NWE less Able to Earn b) if working &gt;25% to &lt;=50% of pre injury hours — 85% of NWE less Able to Earn c) if working &gt;50% to &lt;=75% of pre injury hours — 90% of NWE less Able to Earn d) if working &gt;75% to &lt;100% of pre injury hours: — 95% of NWE less Able to Earn e) if working 100% of pre injury hours — 100% of NWE less Able to Earn.</p> <p>Additional for prescribed person — \$105.42, and for each dependant child — \$52.67. Compensation payments for ex-workers are increased by reference to the ABS Wage Cost Index for year ending 31 December applicable from 1 July each year.</p> <p>Maximum: \$2029.05 from 16 August 2012 (150% of Average Week Ordinary Time Earnings for Full-time Adults as published by Australian Bureau of Statistics).</p> <p><b>Retired Employees</b></p> <p>The combined (workers' compensation and employer funded superannuation benefit) payable to such employees is the equivalent of 70% of their former normal weekly earnings. This is calculated by subtracting from the amount of compensation otherwise payable</p> <p>(i) the employer-funded part of their weekly superannuation pension (or its deemed weekly equivalent from the employer funded lump sum), and</p> <p>(ii) 5% of the employee's former normal weekly earnings to equate with the typical superannuation contribution most employees would have been paying had the employee not retired.</p> <p>The above mentioned "amount of compensation otherwise payable" takes into account any actual or able to earn amount - subsections 20(3), 21(3) and 21A(3).</p>	<p>Redemptions of weekly benefits are only available in some circumstances and are calculated per s30(1) (or s137(1) for "former workers") under the <i>Safety, Rehabilitation and Compensation Act</i>. Medical, rehabilitation or permanent impairment payments are not affected. A redemption lump sum can only be paid out in lieu of ongoing weekly incapacity payments when a worker's weekly incapacity payments are equal to or less than an indexed amount (\$105.42 per week, 1 July 2012) and Comcare is satisfied that the degree of incapacity is unlikely to change. The lump sum payment is calculated by a specified formula.</p>	
<p><b>C'wealth Seacare</b></p> <p>&lt; 45 weeks — 100% NWE which includes overtime if regular and required and penalties, with no maximum cap applied — s31(2).</p> <p>&gt; 45 weeks — s31(5):</p> <p>a) if not working — 75% of NWE.</p> <p>Minimum: \$412.92.</p> <p>Additional for prescribed person — \$102.25, and for each dependant child — \$51.09. Compensation payments for ex-workers are increased by reference to the ABS Wage Cost Index for year ending 31 December applicable from 1 July each year — s31(12) and s(13).</p> <p>b) if working &gt;0% to &lt;=25% of pre injury hours — 80% of NWE less Able to Earn, or c) if working &gt;25% to &lt;=50% of pre injury hours — 85% of NWE less Able to Earn, or d) if working &gt;50% to &lt;=75% of pre injury hours — 90% of NWE less Able to Earn, or e) if working &gt;75% to &lt;100% of pre injury hours — 95% of NWE less Able to Earn, or f) if working 100% of pre injury hours — 100% of NWE less Able to Earn.</p> <p>Maximum: \$2029.05 from 16 August 2012 (150% of Average Week Ordinary Time Earnings for Full-time Adults as published by Australian Bureau of Statistics).</p>	<p>Redemptions of weekly benefits are only available in some circumstances. Medical, rehabilitation or permanent impairment payments are not affected. A redemption lump sum can only be paid out in lieu of ongoing weekly incapacity payments when a worker's weekly incapacity payments are equal to or less than the statutory rate (\$105.42 per week at 1 July 2012) and the employer is satisfied that the degree of incapacity is unlikely to change. The lump sum payment is calculated by a specified formula (s44).</p>	

Calculation		Settlement, redemption, commutation
<b>C'wealth DVA</b>	<p>100% normal earnings (NE) for current members — Chapter 4 Part III.</p> <p>&lt;45 weeks — 100% NE for former members (s131), plus Australian Defence Force (ADF) allowance.</p> <p>&gt;45 weeks — (a) if not working: 75% of NE — s131.</p> <p>Minimum: Federal Minimum Wage — s179.</p> <p>Compensation payments for ex-workers are increased by reference to the ADF pay scales:</p> <p>a) if working &gt;0% to &lt;=25% of pre injury hours — 80% of NE less actual earnings (AE)</p> <p>b) if working &gt;25% to &lt;=50% of pre injury hours — 85% of NWE less AE</p> <p>c) if working &gt;50% to &lt;=75% of pre injury hours — 90% of NE less AE</p> <p>d) if working &gt;75% to &lt;100% of pre injury hours — 95% of NE less AE, or</p> <p>e) if working 100% of pre injury hours — 100% of NE less AE.</p> <p>Maximum: no maximum.</p>	<p>Redemptions of weekly benefits are only available in some circumstances and are calculated per (s138).</p>
<b>New Zealand</b>	<p><b>Employees</b></p> <p>For weeks 2 to 5, 80% of short term rate, which is defined as:</p> <p>Permanent employees — earnings in the four weeks prior divided by number of weeks in which they were derived — Schedule 1, Part 1, clause 34.</p> <p>Non-permanent employees — all earnings in the four weeks prior divided by number of weeks in which they were derived — Schedule 1, Part 1, clause 36.</p> <p>Week 5, 80% of the long term rate, which is defined as:</p> <p>Permanent employees — earnings from employment with that employer in the 52 weeks prior divided by weeks in which they were derived — Schedule 1, Part 1, clause 34.</p> <p>Non-permanent employees — all earnings in the 52 weeks prior divided by 52 weeks — Schedule 1, Part 1, clause 36.</p> <p><b>Shareholder-employees</b></p> <p>Either:</p> <p>a) earnings as an employee in the 52 weeks prior to incapacity divided by the number of weeks worked</p> <p>b) earnings as an employee in the 52 weeks prior to incapacity and as a shareholder employee in the relevant year divided by weeks as an employee plus weeks worked as a shareholder-employee, or</p> <p>c) weeks as an employee divided by 52 plus shareholder-employee earnings divided by 52 — Schedule 1, Part 1, clause 39.</p> <p>Maximum is NZ\$89 334.96. Will be reduced by a proportion of any earnings derived in the period of incapacity.</p> <p>Minimum for full-time earners — 80% of NZ\$510. (The <i>IPRC Amendment Act 2008</i> removed the need for a different minimum earner rate for full-time earners under 18).</p>	<p>Injury prior to 1 April 2002, an independence allowance may be payable if impairment &gt; 10%.</p> <p>From 1 April 2002, spouse of person killed can apply to have weekly compensation commuted.</p> <p>The independence allowance can be capitalised for periods of 5 years, weekly compensation and medical costs can not be commuted.</p>

Table 4.2: Medical, hospital and other costs

	Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
<b>New South Wales</b>	Covers all medical and related treatment and hospital/ ambulance costs. Includes prostheses, allied health provision along with medical provider costs. All costs deemed reasonably necessary. Most medical and related expenses require prior approval. s60, s60A, s61, s62 and 63 of <i>Workers Compensation Act 1987</i> . Fees for many parties covered by fee schedules.	Covered under “medical” same sections of the Act as above. No guidelines in place, no maximum fees or limit. Usually provided for severe injury claimants.	Domestic assistance covered if a medical practitioner certifies it is required. It is available for 6 hours/week for cumulative 12 week period or longer if likely to be over 15% WPI. It is available on an ongoing basis if worker rates 15% WPI or more. s60AA of the 1987 Act. Also covered by Domestic Assistance Guidelines.	Covered under “medical” same sections of the Act as per medical and hospital costs.	No maximum set, other than fee rates for allied health providers, medical practitioners, public, private hospitals and ambulance. s61(2) of the 1987 Act gives WorkCover the power to set fees. Criteria for all services is that it is due to work injury and meets the reasonably necessary criteria.
<b>Victoria</b>	All reasonable costs for road accident rescue services, medical, hospital, nursing, personal and household, occupational rehabilitation and ambulance services received because of the injury — s99(1). Reasonable costs is defined in S99AAA(2). For more information go to Chapter 10 of the On-line Claims Manual on <a href="#">WorkSafe's website</a> .	Attendant care is covered under the definition of ‘personal and household services’ in s5(1). When making an assessment of an attendant care program consideration needs to be given to the worker’s: <ul style="list-style-type: none"> <li>• abilities</li> <li>• degree of self reliance</li> <li>• accommodation needs</li> <li>• extent of family support, and</li> <li>• family’s need for respite.</li> </ul>	Personal and household services are defined in s5(1) and payable under s99(1). In determining entitlement for personal and household services the individual circumstances of the worker need to be assessed having regard to: <ul style="list-style-type: none"> <li>• the reasonableness of the cost of the service, and</li> <li>• whether the service is necessary in the circumstances.</li> </ul>	WorkSafe can pay the reasonable costs of home or car modifications reasonably required as a result of a work related injury where approval is given before the costs are incurred — s99AC. WorkSafe is liable to pay the reasonable costs of modifying the car, or if the car is not capable of being modified, to contribute a reasonable amount to the purchase cost of a suitably modified car. WorkSafe is liable to pay the reasonable costs of modifying the home, or if for any reason the home cannot be reasonably modified, to contribute a reasonable amount towards the purchase costs of a semi-detachable portable unit or the costs of relocating the worker to another home that is suitable.	WorkSafe may issue guidelines identifying services or classes of services for which approval should be sought from WorkSafe before the services are provided — s99(2). Entitlement to medical and like services ceases 52 weeks after the entitlement to weekly payments cease, or if compensation is only payable for medical and like services, 52 weeks after entitlement commenced unless certain circumstances apply — s99AD. If a worker’s injury is severe (s99AAA) or results in death, family members are eligible for counselling services — s99(1)(b).
<b>Queensland</b>	The insurer must pay the cost of the medical treatment or hospitalisation that the insurer considers reasonable having regard to the workers injury. Under the table of costs, the Authority may impose conditions on the provision of the medical treatment (s210 of the Act). The insurer must pay the costs that it accepts as reasonable, having regard to the relevant table of costs, for medical treatment by a registered person (s211). The Table of costs are published by the Authority (Q-COMP). The Insurer must pay the fees or costs of rehabilitation that the insurer accepts to be reasonable, having regard to the worker’s injury (s222 and s223).	As above for Act references. Insurer decision on a case by case basis with respect to funding these services. Home Nursing services are listed under the Nursing services table of cost published by <a href="#">Q-COMP</a> .	Insurer decision on a case by case basis with respect to funding these services. Domestic assistance covered under the Rehabilitation support table of cost published by <a href="#">Q-COMP</a> . Act s224 A caring allowance may be paid if the insurer is satisfied — the worker depends on day to day care for the fundamental activities of daily living; and the care is to be provided to the worker at the worker’s home on a voluntary basis or by another person in relation to whom compensation is not payable.	The insurer must pay the cost of the medical treatment or hospitalisation that the insurer considers reasonable having regard to the workers injury. Under the table of costs, the Authority may impose conditions on the provision of the medical treatment (s210 of the Act). The insurer must pay the costs that it accepts as reasonable, having regard to the relevant table of costs, for medical treatment by a registered person (s211). The Table of costs are published by the Authority (Q-COMP). The Insurer must pay the fees or costs of rehabilitation that the insurer accepts to be reasonable, having regard to the worker’s injury (s222 and s223).	As above for Act references. Insurer decision on a case by case basis with respect to funding these services. Home Nursing services are listed under the Nursing services table of cost published by <a href="#">Q-COMP</a> .

	Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
<b>Western Australia</b>	<p>Reasonable expenses incurred — s1, clause 17. Limited to 30% of prescribed amount (\$59,510). An additional \$50 000 can be granted by an arbitrator where the worker's social and financial circumstances justify it — s1, clause 18A(1).</p> <p>If a worker meets an exceptional medical circumstances test and has a WPI of not less than 15%, they may apply for additional medical and related expenses capped at \$250 000. Workers granted such an extension are excluded from seeking common law damages — s1, clause 18A.</p>	<p>Reasonable expenses associated with a nursing home may be paid where a medical practitioner certifies that the worker is totally and permanently incapacitated and requires continuing medical treatment and maintenance, which cannot be administered in the worker's domestic environment — Schedule 1, clause 17(1).</p>	N/A	<p>Not prescribed in legislation. In special circumstances insurers may approve limited home and vehicle modifications.</p> <p>Injured workers that require assistance from an approved vocational rehabilitation provider to assist them to return to work can access the entitlement for vocational rehabilitation expenses, which represents 7% of the prescribed amount (up to \$1388.55 at 30 September 2012).</p> <p>Workers injured post 14 November 2005 with a degree of WPI between not less than 10% and 15% that have exhausted all avenues in an attempt to return to work may be able to access a specialised retraining program. To qualify, injured workers need to meet strict retraining criteria. Specialised retraining programs can offer an extension of up to 75% of the prescribed amount (up to \$148 773.75 at 30 September 2012) to partake in informal training, vocational or tertiary studies.</p>	Limits as noted above.
<b>South Australia</b>	<p>A worker is entitled to be compensated for reasonable costs (including medical and hospital costs), reasonably incurred in consequence of having suffered a compensable injury — s32.</p>	<p>WorkCover may pay the cost of attendance by a registered or enrolled nurse, or by some other person approved by WorkCover, where the injury is such that the worker requires attendant care — s32(2)(f).</p> <p>Each case for attendant care must be determined on its own merits, and the test is the reasonableness of the particular worker in incurring the expense in the circumstances. Reasonableness should be considered in the context of:</p> <ul style="list-style-type: none"> <li>• the nature of the service</li> <li>• the necessity of the service</li> <li>• the relationship to the injury</li> <li>• the number and frequency of services</li> <li>• the benefit to the worker, and</li> <li>• the cost of the service.</li> </ul>	<p>WorkCover may as part of a rehabilitation program provide services (including home help and domestic assistance) to assist workers to cope with their injuries at home or in the workplace — s26(3)(g) and s32(2).</p>	<p>WorkCover may as part of a rehabilitation program provide equipment, facilities and services (including home, vehicle modification, aids and appliances) to assist workers to cope with their injuries at home or in the workplace — s26(3)(g) and s32(2).</p> <p>A worker who has suffered a serious injury or injuries and whose rehabilitation goal is restoration to the community may require his/her home or vehicle to be modified as part of that goal. The extent of such modifications will depend on the circumstances of each case.</p>	<p>Fees are regulated by gazette for hospital, medical and allied health services — s32(11). Other costs may be reimbursed if reasonably incurred — s32(1).</p>
<b>Tasmania</b>	<p>A worker is entitled to compensation for reasonable expenses necessarily incurred as a result of the injury (s75(1)(a)).</p>	<p>A worker is entitled to compensation for reasonable expenses for constant attendance services necessarily incurred as a result of the injury (s75(1)(a)). Constant</p>	<p>A worker is entitled to compensation for reasonable expenses for household services necessarily incurred as a result of the injury (s75(1)(a)). Household services are</p>	<p>A worker is entitled to compensation for reasonable expenses for rehabilitation services necessarily incurred as a result of the injury (s75(1)(a)). Rehabilitation services</p>	<p>A worker is entitled to compensation for reasonable expenses necessarily incurred as a result of the injury (s75(1)(a)). There is no monetary limit. However, there are</p>

	Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
		attendance services are services provided by a person other than a member of the worker's family where the worker requires the regular or constant personal attendance of another person (s74). Where there is any dispute in relation to constant attendance services, the Tribunal can make a determination as to: the necessity for the services, the period for which they are to be provided, and the level of payments that are reasonable and appropriate for those services (s75(3)).	services provided to the worker (other than by a family member) of a domestic nature and services required for the proper running and maintenance of the worker's residential premises (s74). Where there is any dispute in relation to household services, the Tribunal can make a determination as to: the necessity for the services, the period for which they are to be provided, and the level of payments that are reasonable and appropriate for those services (s75(3)).	include any treatment, training or other assistance to facilitate or assist a worker's rehabilitation, and necessary and reasonable modifications required to be made to the worker's workplace, place of residence or motor vehicle (s74). Where there is any dispute in relation to rehabilitation services, the Tribunal can make a determination as to: the necessity for the services, the period for which they are to be provided, and the level of payments that are reasonable and appropriate for those services (s75(3)).	limits on duration. If the worker is entitled to weekly payments for incapacity in respect of the injury, entitlement to compensation for medical and other expenses ceases 52 weeks after the lawful termination of weekly payments (s75(2)). If the worker is not entitled to weekly payments for incapacity, entitlement to compensation for medical and other expenses ceases 52 weeks after the date the claim was made (s75(2AA)). Compensation for medical and other expenses can be extended by Tribunal order (s75(2AB)).
<b>Northern Territory</b>	Costs reasonably incurred — s73.	Costs that are reasonable and necessary — s78.	Costs that are reasonable and necessary — s78.	Costs that are reasonable and necessary — s78.	No
<b>Australian Capital Territory</b>	Medical treatment reasonably received (s70 <i>Workers Compensation Act 1951</i> ).	Other costs reasonably required (s70(1)(c) <i>Workers Compensation Act 1951</i> ).	Other costs reasonably required (s70(1)(c) <i>Workers Compensation Act 1951</i> ).	Cost of alterations (s70(1)(b) <i>Workers Compensation Act 1951</i> ).	Costs are as agreed with the insurer or \$662.61 indexed.
<b>C'wealth Comcare</b>	Medical treatment at a cost appropriate to that treatment — s16	<p>Compensation is payable for attendant care services reasonably required — s29(1). This is generally from 28 days after the date of injury. s29(4) requires consideration of:</p> <ul style="list-style-type: none"> <li>a) nature of injury and degree that injury impairs ability to provide for personal care</li> <li>b) extent to which any medical service or nursing care received provides for essential and regular personal care</li> <li>c) extent to which reasonable to meet any wish by the employee to live outside an institution</li> <li>d) extent to which attendant care services are necessary to enable the employee to undertake or continue employment</li> <li>e) any assessment made in relation to rehabilitation of the employee, or</li> <li>f) extent to which a relative might reasonably be expected to provide attendant care services.</li> </ul> <p>Not payable where an employee is residing in nursing home or other similar place — s29(3). Comcare is liable to pay the lesser of \$421.50 (statutory rate updated 1 July) or an amount per week paid or payable by the employee for those services.</p>	<p>Compensation is payable for household services reasonably required — s29(1). This is generally from 28 days after the date of injury. s29(2) requires consideration of:</p> <ul style="list-style-type: none"> <li>a) extent to which household services were provided by the employee before the injury and extent to which employee is able to provide those services after that date</li> <li>b) number of persons living with the employee as members of household, their ages and their need for household services</li> <li>c) extent to which household services were provided by the persons referred to in paragraph (b) before the injury</li> <li>d) extent to which the persons referred to in paragraph (b), or any other members of employee's family, might reasonably be expected to provide household services for themselves and for the employee after the injury, or</li> <li>e) the need to avoid substantial disruption to the employment or other activities of the persons referred to in paragraph (b).</li> </ul> <p>Comcare is liable to pay not less than 50% of the amount paid or payable by the employee nor more than \$421.50 (statutory rate updated 1 July).</p>	<p>Comcare is liable to pay compensation of such amount as is reasonable in respect of costs payable by the employee due to any alteration of the employee's place of residence or work, any modifications of a vehicle or article used or any aids/ appliances for the use of the employee, or the repair or replacement of same — s39.</p>	<p>Medical and hospital costs — no limits — appropriate costs — s16.</p> <p>Other costs — no limits.</p>

	Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
<b>C'wealth Seacare</b>	All reasonable costs — s28.	s43(5) The following matters need to be considered: <ul style="list-style-type: none"> <li>• nature of the injury and the degree to which that injury impairs the worker's ability to provide for their personal care</li> <li>• extent to which any medical service or nursing service received by the employee provides for his or her essential and regular personal care</li> <li>• extent to which it is reasonable to meet any wish by the employee to live outside an institution</li> <li>• extent to which attendant care services are necessary to enable the employee to undertake or continue employment</li> <li>• any assessment made in relation to the rehabilitation of the employee, and</li> <li>• extent to which a relative of the employee might reasonably be expected to provide attendant care services.</li> </ul>	s43(3) The following matters need to be considered: <ul style="list-style-type: none"> <li>• extent to which household services were provided by the employee before the date of the injury and the extent to which he or she is able to provide those services after that date</li> <li>• number of persons living with the employee as members of their household, their ages and need for household services</li> <li>• extent to which household services were provided to the employee before the injury</li> <li>• extent to which members of the household might reasonably be expected to provide household services for themselves and injured employee, and</li> <li>• the need to avoid substantial disruption to the employment or other activities of persons in the household.</li> </ul>	s51 Where an employee has undertaken or completed a rehabilitation program or is assessed as not capable of undertaking a program, the following are payable if reasonable: <ul style="list-style-type: none"> <li>• costs of alteration of employee's residence or place of work</li> <li>• modifications to a vehicle used by employee, and</li> <li>• aids and appliances including repair or replacement.</li> </ul>	Attendant care — \$421.50. Household help — \$421.50, not less than 50% paid by employee unless the amount is greater than \$823.01.
<b>C'wealth DVA</b>	a) All reasonable costs — s270, or b) scheduled items if condition is chronic and member has discharged from the ADF — s278.	Liable to pay compensation for attendant care services reasonably required.  In the amount of: a) \$437.90 per week, or b) an amount per week equal to the amount per week paid or payable by the person for those services, whichever is less — s219.  The following matters need to be considered (s218): a) the nature of the person's injury or disease b) the degree to which that injury or disease impairs the person's ability to provide for his or her personal care c) the extent to which any medical service or nursing care received by the person provides for his or her essential and regular personal care, d) the extent to which the attendant care services are necessary to meet any reasonable wish by the person to live outside an institution e) the extent to which attendant care services are necessary to enable the person to undertake	Liable to pay compensation for household services reasonably required.  in the amount of: a) \$437.90 per week, or b) an amount per week equal to the amount per week paid or payable by the person for those services, whichever is less — s216.  The following matters need to be considered (s215): a) the extent to which household services were provided by the person before the service injury or disease b) the extent to which he or she is able to provide those services after the service injury or disease c) the number of other persons (household members) living with that person as members of his or her household d) the age of the household members and their need for household services e) the extent to which household services were provided by household members before the service injury or disease	1. a) Loss of, or damage to, medical aids — s226 b) alterations to a person's place of residence, education, work or service — s56. • reimbursement of amounts reasonably incurred in replacement or repair. 2. Motor Vehicle Compensation Scheme — s212.  To provide for the reasonable costs of a vehicle's modification (and vehicle purchase in some circumstances). • the amount is what the MRCC considers reasonable.	Attendant care — \$437.90 per week. Household services — \$437.90 per week.

	Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
		<p>or continue defence service or any other work</p> <p>f) any assessment made in relation to the rehabilitation of the person</p> <p>g) the extent to which a relative of the person might reasonably be expected to provide attendant care services, or</p> <p>h) any other matter that the MRCC considers relevant.</p>	<p>f) the extent to which household members, or any other relatives of the person, might reasonably be expected to provide household services for themselves and for the person after the service injury or disease</p> <p>g) the need to avoid substantial disruption to the work or other activities of the household members, or</p> <p>h) any other matter that the MRCC considers relevant.</p>		
<b>New Zealand</b>	<p>Regulated or contract rates for treatment and reasonable costs associated with social and vocational rehabilitation — s60 (1)(a). Prior approval is required except for acute treatment and all costs approved by contract or regulations: — Schedule 1, Part 1, s1.</p>	<p>“In deciding whether to provide or contribute to the cost of attendant care, the Corporation must have regard to —</p> <p>a) any rehabilitation outcome that would be achieved by providing it</p> <p>b) the nature and extent of the claimant’s personal injury and the degree to which that injury impairs his or her ability to provide for his or her personal care</p> <p>c) the extent to which attendant care is necessary to enable the claimant to undertake or continue employment (including agreed vocational training) or to attend a place of education, having regard to any entitlement the claimant has to education support</p> <p>d) the extent to which household family members or other family members might reasonably be expected to provide attendant care for the claimant after the claimant’s personal injury</p> <p>e) the extent to which attendant care is required to give household family members a break, from time to time, from providing attendant care for the claimant, and</p> <p>f) the need to avoid substantial disruption to the employment or other activities of household family members — Schedule 1, cl(14)<sup>7</sup>.”</p>	<p>“Reimbursement: Schedule 1, Part 1 17 Home help (1) In deciding whether to provide or contribute to the cost of home help, the Corporation must have regard to —</p> <p>a) any rehabilitation outcome that would be achieved by providing it, and</p> <p>b) the extent to which a claimant undertook domestic activities before the claimant’s personal injury and the extent to which he or she is able to undertake domestic activities after his or her injury, and</p> <p>c) the number of household family members and their need for home help, and</p> <p>d) the extent to which domestic activities were done by other household family members before the claimant’s personal injury, and</p> <p>e) the extent to which other household family members or other family members might reasonably be expected to do domestic activities for themselves and for the claimant after the claimant’s personal injury, and</p> <p>f) the need to avoid substantial disruption to the employment or other activities of the household family members, and</p> <p>g) the impact of the claimant’s personal injury on the contribution of other family members to domestic activities.</p> <p>Calculation: All assistance must be provided to meet an assessed, injury-based need. ACC is only responsible for providing the level of assistance required to achieve the planned rehabilitation outcome.</p>	<p>“Social rehabilitation includes:</p> <ul style="list-style-type: none"> <li>• aids and appliances</li> <li>• child care</li> <li>• educational support</li> <li>• home modifications</li> <li>• training for independence, and</li> <li>• transport for independence (including vehicle purchasing and modifications).</li> </ul> <p>All assistance must be provided to meet an assessed, injury-based need. ACC is only responsible for providing the level of assistance required to achieve the planned rehabilitation outcome.”</p>	<p>Noted above.</p>



	Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
			<p>Limits:                      The Corporation [is not required] to pay for home help to the extent that home help continues to be provided after a claimant's personal injury by a person —</p> <ul style="list-style-type: none"> <li>a) who lives in the claimant's home or lived in the claimant's home immediately before the claimant suffered his or her personal injury, and</li> <li>b) who provided home help before the claimant suffered his or her personal injury. "</li> </ul>		

Table 4.3: Permanent impairment payments

Benefit type	Maximum amount (current)	Indexation mechanism	Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Weekly benefits still payable?	
<b>New South Wales</b>  Lump sum compensation for permanent impairment (s66, 1987 Act) and pain and suffering (s67, 1987 Act) only applicable to: <ul style="list-style-type: none"> <li>• police officers, paramedics and fire fighters</li> <li>• workers injured while working in or around a coal mine</li> <li>• bush fire fighter and emergency service volunteers (Rural Fire Service, Surf Life Savers, SES volunteers).</li> </ul> For claims made by all other workers on and after 19 June 2012: <ul style="list-style-type: none"> <li>• Lump sum compensation for permanent impairment (s66 1987 Act).</li> </ul>	Maximum amount payable for permanent impairment is \$220,000 (plus additional 5% for back impairment).  Pain and suffering lump sum (max of \$50 000) may only be payable to police officers, fire fighters, paramedics, bush fire fighters and emergency services volunteers, workers injured while working in or around a coal mine.	Not indexed.	Thresholds for claims for: <ul style="list-style-type: none"> <li>• work Injury Damages 15% WPI</li> <li>• commutation 15% WPI, and</li> <li>• other criteria apply for the above claims.</li> </ul>	Weekly benefits and medical costs are still payable.	
<b>Victoria</b>	Combined <sup>1</sup>	\$543 920 — s98C.	CPI (Melbourne). Adjusted 1 July.	See section on common law at Table 4.6.	
<b>Queensland</b>	Standard. Additional (s192(2)). Gratuitous care (s193(6)). Latent onset (s128B).	\$287 605 (standard). \$287 605 (additional — s192(2)). \$325 800 (Gratuitous care). \$603 985 (Latent onset). (as at 1 July 2012).	QOTE. Adjusted 1 July.	If 30% or more WRI: up to \$287 605 additional lump sum compensation, payable according to a graduated scale prescribed by regulation (s192).  If a worker sustains an injury that results in a WRI of 15% or more and a moderate to total level of dependency on day to day care for the fundamental activities of daily living, the worker is entitled to additional lump sum compensation of up to \$325 800, payable according to a graduated scale prescribed by regulation, but only if: <ol style="list-style-type: none"> <li>day to day care for the fundamental activities of daily living is to be provided at the worker's home on a voluntary basis by another person, and</li> <li>the worker resides at home on a permanent basis, and</li> <li>the level of care required was not provided to the worker before the worker sustained the impairment, and</li> <li>the worker physically demonstrates the level of dependency (s193).</li> </ol> No threshold for common law.	All other payments cease.

	Benefit type	Maximum amount (current)	Indexation mechanism	Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Weekly benefits still payable?
<b>Western Australia</b>	Lump sum for single or multiple impairments.	\$198 365 for Schedule 2 Impairments.	Index ordinary time hourly rates of pay for Western Australia. Adjusted 1 July.	<ol style="list-style-type: none"> <li>1. Common law: not less than 15% WPI (limited damages) and not less than 25% WPI (unlimited damages).</li> <li>2. Specialised retraining programs: Not less than 10% WPI but less than 15% WPI (also need to satisfy criteria determined by WorkCover WA).</li> <li>3. Payment of additional expenses: (Schedule 1, Clause 18A of up to \$250 000). Not less than 15% WPI (Arbitrator is also to have regard to the social and financial circumstances and the reasonable financial needs of the injured worker).</li> </ol>	Weekly payments cease once a memorandum of agreement is registered pursuant to s76 of the Act. Publications / Guidance : <a href="#">Workers' Compensation and Injury Management: A Guide for Workers.</a> <a href="#">Specialised Retraining.</a> <a href="#">Medical Expenses / Exceptional Circumstances Medical Payments.</a> <a href="#">Prescribed Amount.</a> <a href="#">Settlements.</a>
<b>South Australia</b>	Non-economic loss.	\$454 739 for 2012. s43. See ' <a href="#">Schedule of Sums</a> '	For the purpose of the definition of 'prescribed sum' it is adjusted on 1 January each year by multiplying \$426 255 by a proportion obtained by dividing the Consumer Price Index for the September quarter of the immediately preceding year by the Consumer Price Index for the September quarter, 2009 (with the amount so adjusted being rounded up to the nearest dollar) refer Regulation 39, <i>Workers Rehabilitation and Compensation Regulations 2010</i> .	N/A	Weekly benefits and medical costs are still payable.
<b>Tasmania</b>	Combined <sup>1</sup>	\$305 759.55	415 x basic salary. The basic salary is calculated each year taking into account the variation in the average weekly ordinary full-time earnings of adults in Tasmania from May of the preceding year and May in the year before that. For example, the basic salary for 2012 was calculated taking in account the variation in the average weekly earnings between May 2010 and May 2011.	20% WPI for access to common law damages.	Entitlement to weekly benefits and medical costs is not affected except where payment of impairment benefit is a component of a claim settlement.
<b>Northern Territory</b>	Combined <sup>1</sup>	\$292 988.80	208 X full-time adult persons weekly ordinary time earnings for Northern Territory. Adjusted on 1 January.	N/A	Payment of Permanent Impairment (PI) does not impact on any other entitlements.
<b>Australian Capital Territory</b>	Single, or multiple impairments.	\$132 522 (April 12) (single). \$198 783 (April 12) (multiple).	CPI (Canberra). Adjusted quarterly in line with CPI indexed variations.	—	Payment of PI does not impact on any other entitlements.

Benefit type	Maximum amount (current)	Indexation mechanism	Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Weekly benefits still payable?
<b>C'wealth Comcare</b>	Economic Non Economic.	\$168 605.02 (Economic). \$63 226.92 (non economic).	CPI. Adjusted 1 July.	N/A  Payment of PI does not impact on any other entitlements under the SRC. The PI lump sum is in addition to 'economic' benefit of weekly incapacity. Payment of a PI lump sum does not extinguish weekly incapacity nor does it reduce any liability for ongoing economic benefits.
<b>C'wealth Seacare</b>	Economic. Non Economic.	\$168 605.01 (Economic) \$63 226.92 (non economic)	CPI. Adjusted 1 July.	N/A  Payment of PI does not impact on any other entitlements under the Seafarers Act.
<b>C'wealth DVA</b>	Combined.	\$309.27 per week or equivalent age based lump sum up to maximum \$410 122.95 — MRCA s74 and s78.	CPI. Adjusted 1 July — MRCA s404.	<ul style="list-style-type: none"> <li>• \$79 615.94 plus education scheme benefits equivalent to Youth Allowance paid for each dependant eligible young person, if the impaired person suffers impairment of 80 or more Impairment Points (IPs) — MRCA s80 and s258.</li> <li>• MRCA Supplement of maximum \$3.10 per week paid if the impaired person suffers impairment of 80 or more IPs — MRCA s223.</li> <li>• Free medical treatment for all conditions (compensable or otherwise) if the impaired person suffers impairment of 60 or more IPs due to compensable conditions — MRCA s281.</li> <li>• Maximum \$1 592.31 for financial advice compensation if the impaired person suffers impairment of 50 or more IPs — MRCA s82.</li> </ul> Payment of PI can impact on the payment of Special Rate Disability Pension — MRCA s204.
<b>New Zealand</b>	Non Economic.	Maximum \$128 643.	Adjusted 1 July.	N/A  Injury prior to 1 April 2002, an independence allowance may be payable if impairment > 10% WPI. From 1 April 2002, spouse of person killed can apply to have weekly compensation commuted. The independence allowance can be capitalised for periods of 5 years.

Table 4.4: Death entitlements

	Lump sum	Periodic payments	Other payments
<b>New South Wales</b>	\$481 950 — 1987 Act, s25(1)(a). \$291 040 — <i>Workers' Compensation Dust Diseases Act 1942</i> , s8(2B)(b)(i).	\$122.50 a week to each dependant child — 1987 Act, s25(1)(b). \$252.50 weekly to dependant spouse — <i>Workers Compensation (Dust Diseases) Act 1942</i> s8(2B)(b)(ii). \$127.60 benefit paid to each dependant child — <i>Workers Compensation (Dust Diseases) Act 1942</i> , s8(2B)(b)(iii).	Funeral expenses \$9000 maximum — 1987 Act, s27.
<b>Victoria</b>	\$543 920 — s92A.	Dependant partner — determined by average pre-injury earnings (PIAWE) subject to statutory maximum — s92B: First 13 weeks: <ul style="list-style-type: none"> <li>• 95% of earnings</li> <li>• \$2000 max.</li> </ul> 14 weeks — 3 years: <ul style="list-style-type: none"> <li>• 50% of earnings</li> <li>• \$2000 max.</li> </ul> \$1330 max. for partner with more than 5 children. A range of payments for dependant children depending on the particular circumstances of the child.	Reasonable funeral expenses, not exceeding \$10 375 — s99. Counselling for family members, max. total \$5750 — s99.
<b>Queensland</b>	\$538 715. \$14 395 for a totally dependant spouse — s200(2)(aa), and \$28 780 for each dependant family member other than the spouse, under 16 or a student — s200(2)(b).	Weekly payment of 8% of QOTE (\$106.45) for the spouse if there is a dependant family member under 6 — s200(2)(ab), and weekly payment of 10% of QOTE (\$133.05) for each dependant under 16 or a student s200(2)(c).	Reasonable funeral expenses — s199, Chapter 3 Part 11.
<b>Western Australia</b>	\$271 935 (subject to Labour Price Index (LPI)) notional residual entitlement of the deceased worker — Schedule 1(1).	A child's allowance of \$52.00 per week (subject to LPI) for each dependant child up to age 16 or 21 if a student, whichever an arbitrator determines as likely to be in the best interests of that dependant.	Reasonable funeral expenses: not exceeding \$9003 subject to CPI — Schedule 1(17).
<b>South Australia</b>	Dependant partner: A lump sum equal to the prescribed sum less any amount that the deceased worker received as compensation for non-economic loss under Division 5 — s45A(5). Dependant partner and one dependant child: 90% of the prescribed sum to partner and 10% to the child. Dependant partner and more than one and not more than five dependant children: 5% to each child with the balance to the partner. Dependant partner and more than five dependant children: 75% to the partner and 25% to children shared equally. Dependant orphaned child: A lump sum of \$437 401 (as of 1 Sept 2011) less any amount that the deceased worker received as compensation for non-economic loss under Division 5 — s45A(6). [If there is more than 1 dependant orphaned children, that amount is divided equally between them]. Prescribed sum will be \$454 739 from 1 January 2012 for claims received on or after 1 July 2008.	Dependant spouse or domestic partner: weekly payments equal to 50% (less if partially dependant spouse) of the amount of the NWE of the deceased worker — s44(1)(a). Dependant orphaned child: weekly payments equal to 25% (less if partially dependant child) of the amount of the NWE of the deceased worker — s44(1)(b). Dependant non-orphaned child: weekly payments equal to 12.5% (less if partially dependant child) of the amount of the NWE of the deceased worker — s44(1)(d). Dependant relative: may be eligible for weekly payments if WorkCover determines they are eligible in their particular circumstances — s44(1)(e). The total aggregate payable to all dependants is limited to the amount the worker would have been entitled if the worker was totally and permanently incapacitated — s44(9).	Funeral expenses: maximum as at 1 Jan 2012, \$9602, s45B(1) and Regulation40(3). See: <a href="#">'Help when someone dies because of their work'</a> a fact sheet outlining some of the important matters you may need to consider, including financial issues, with the sudden loss of a family member. See: WorkCoverSA's <a href="#">Injury and Case Management Manual, Chapter 12: 'Death Claims'</a> .
<b>Tasmania</b>	Maximum payment: \$305 759.55 — s67.	A dependant spouse or caring partner is entitled to weekly payments for a period of two years from the date of death calculated at the same rate as the deceased would have received if he/she became totally incapacitated — s67A:	—

	Lump sum	Periodic payments	Other payments
		<ul style="list-style-type: none"> <li>• first 26 weeks following the date of death: 100% of weekly payments</li> <li>• &gt;26 weeks, up to 78 weeks: 90% of weekly payments, and</li> <li>• &gt;78 weeks, up to 2 years from the date of death: 80% of weekly payments.</li> </ul> <p>A dependant child is entitled to weekly payments paid at 15% of the basic salary (\$110.52 per week), commencing on the expiration of 13 weeks after the date of death — s67A.</p>	
<b>Northern Territory</b>	Entitled to 260 times the average weekly earnings (\$366 236 in prescribed proportions (share with children), or such proportions as the Court determines — s62(1).	10% of average weekly earnings (\$140.86 for each child under 16 (or 21 if student), for up to 10 children — s63. Limited to 100% of average weekly earnings (\$1408.60).	Max: 10% of the annual equivalent of average weekly earning (\$7324.72) for funeral costs — s62(1)(a).
<b>Australian Capital Territory</b>	\$207 192 (April 2012) CPI indexed (to be divided between the dependants — s77(2).	\$69.06 per child, CPI indexed — s77(2).	\$5525.12 CPI indexed for funeral expenses — s77(2).
<b>C'wealth Comcare</b>	\$475 962.79 — s17(3) and s17(4).	\$130.89 a week to each child under 16 (or 25 if full-time student) — s17(5).	Reasonable funeral expenses, not exceeding \$10 735.29 — s18(2).
<b>C'wealth Seacare</b>	\$479 634.63 — s29(3).	\$131.90 a week to each child under 16 (or 25 if full-time student) — s29(5).	Reasonable funeral expenses, not exceeding \$5838.09 — s30(2).
<b>C'wealth DVA</b>	<ul style="list-style-type: none"> <li>• \$391.80 per week for partner, or equivalent age based lump sum up to a maximum of \$659 752.02 — MRCA s234(4) and s234(5).</li> <li>• \$132 693.24 (age-based maximum additional amount for partner where a service death as defined).</li> <li>• \$79 615.94 (maximum amount for each "other dependant") to a maximum of \$252 117.16 for all "other dependants" — MRCA s263.</li> <li>• \$79 615.94 for each child — MRCA s252.</li> </ul>	<ul style="list-style-type: none"> <li>• \$87.57 a week to each child under 16 (or to age 25 if full-time student) — MRCA s254.</li> <li>• \$3.10 MRCA Supplement per week to the partner and each child — MRCA s247.</li> </ul>	<ul style="list-style-type: none"> <li>• Reasonable funeral expenses, not exceeding \$10 735.29 — MRCA s267.</li> <li>• Medical treatment for partner and each child for all conditions — MRCA s284 and s302.</li> <li>• \$1592.31 financial advice for partner MRCA s240.</li> <li>• Children's education expenses equivalent to Youth Allowance payable in some circumstances — MRCA s258.</li> <li>• Bereavement payments for a limited time where deceased was in receipt of periodical compensation payments — MRCA s243 and s256.</li> </ul>
<b>New Zealand</b>	Spouse: NZ\$6303 Each child or other dependant: NZ\$3151.	Spouse: 60% of the long-term rate of weekly compensation that the earner would have received. Each child and other dependant: 20% of the weekly compensation. If total entitlement exceeds 100%, individual entitlements are reduced on a pro rata basis.	Funeral grant: NZ\$5879. Child care payments: NZ\$134.05 for a single child, NZ\$80.42 each if there are more than two children, and a total of NZ\$187.67 for 3 or more children.

Table 4.5: Definitions of dependants/ spouse for death benefits

Who is entitled to death benefits Definitions		Reference to same sex relationships	Other relevant information	
<b>New South Wales</b>	<p>1987 Act, s25 — dependants: If there are no dependants the lump sum death benefit is paid to the worker's estate. <i>Workers Compensation (Dust Diseases) Act 1942</i>, s8(2B): dependants.</p>	<p>1998 Act, s4: "dependants" of a worker means such of the members of the worker's family as were wholly or in part dependant for support on the worker at the time of the worker's death, or would but for the incapacity due to the injury have been so dependant, and includes:</p> <ul style="list-style-type: none"> <li>a) a person so dependant to whom the worker stands in the place of a parent or a person so dependant who stands in the place of a parent to the worker, and</li> <li>b) a divorced spouse of the worker so dependant, and</li> <li>c) a person so dependant who: <ul style="list-style-type: none"> <li>(i) in relation to an injury received before the commencement of Schedule 7 to the <i>Workers Compensation Legislation Amendment (Dust Diseases and Other Matters) Act 1998</i> — although not legally married to the worker, lived with the worker as the worker's husband or wife on a permanent and genuine domestic basis, or</li> <li>(ii) in relation to an injury received after that commencement — is the de facto partner of the worker. Note: 'De facto partner' is defined in s21C of the Interpretation Act 1987.'</li> </ul> </li> </ul> <p>1987 Act, s25(5): " in this section:</p> <ul style="list-style-type: none"> <li>• "child of the worker" means a child or stepchild of the worker and includes a person to whom the worker stood in the place of a parent.</li> <li>• "dependant child of the worker" means a child of the worker who was wholly or partly dependant for support on the worker.</li> <li>• "student" means a person receiving full-time education at a school, college or university".</li> </ul> <p><i>Workers Compensation (Dust Diseases) Act 1942</i>, s8(2B)(a) — persons dependant for support upon a worker "...immediately before the worker's death, being the following and no other person or persons:</p> <ul style="list-style-type: none"> <li>• a prescribed relative of the worker, or</li> <li>• a surviving spouse and a child or children of the worker".</li> </ul> <p><i>Workers Compensation (Dust Diseases) Act 1942</i>, s8(9). " In this section: ' prescribed relative' of a person means:</p> <ul style="list-style-type: none"> <li>a) where the person died before the commencement of Schedule 6[12] to the <i>Workers Compensation Legislation Amendment (Dust Diseases and Other matters) Act 1998</i> — a surviving spouse of the person, or</li> <li>(b) where the person dies after that commencement, <ul style="list-style-type: none"> <li>(i) a surviving spouse of the person, or</li> <li>(ii) if there is no surviving spouse of the person — a father, mother, grandfather, grandmother, step-father, step-mother, grandson, granddaughter, brother, sister, half-brother or half sister of the person".</li> </ul> </li> </ul> <p><i>Workers Compensation (Dust Diseases) Act 1942</i>: s8(2AA): provides for dependants, being children of a deceased worker who had no spouse. S8(2B)(e) — references to "child" includes step-children and children to whom the worker stood in loco parentis.</p>	<p>Broad definition of 'dependant' — encompasses same sex relationships.</p>	<p>—</p>
<b>Victoria</b>	<p>s5(1) — "dependant" means a person who:</p> <ul style="list-style-type: none"> <li>a) at the time of the death of a worker was wholly, mainly or</li> </ul>	<p>Yes.</p>	<p>s5 — "member of a family" means the</p>	

Who is entitled to death benefits Definitions		Reference to same sex relationships	Other relevant information	
		<p>partly dependant on the earnings of the worker, or</p> <p>b) would but for the incapacity of a worker due to the injury have been wholly, mainly or partly dependant on the earnings of the worker.</p> <p>s5(1): "spouse" of a person means a person to whom that person is married.</p> <p>s5(1): "partner" of a worker means:</p> <p>a) in relation to a worker who died before the commencement of s4 <i>Statute Law Amendment (Relationships) Act 2001</i> —</p> <p>(i) the worker's spouse at the time of the worker's death; or</p> <p>(ii) a person of the opposite sex who, though not married to the worker, lived with the worker at the time of the worker's death on a permanent and bona fide domestic basis;</p> <p>b) in relation to a worker who dies on or after that commencement — the workers' spouse or domestic partner at the time of the worker's death.</p> <p>s5(1) — "domestic partner" of a person means:</p> <p>a) a person who is in a registered domestic relationship, or</p> <p>b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender).</p>	<p>s92A: Revised compensation for death of worker.</p> <p>Includes definitions:</p> <p>"partially dependant partner" means a partner who is to any extent dependant on the worker's earnings.</p> <p>"dependant partner" means a partner wholly or mainly dependant on the worker's earnings.</p>	<p>partner, father, mother, grandfather, grandmother, stepfather, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister and any person who stands in the place of a parent in relation to another person or that other person.</p>
Queensland	Chapter 3 part 11: dependant	<p>s27 — Meaning of dependant — A dependant, of a deceased worker, is a member of the deceased worker's family who was completely or partly dependant on the worker's earnings at the time of the worker's death or, but for the worker's death, would have been so dependant.</p> <p>s29 — Who is the spouse of a deceased worker:</p> <p>1. The spouse, of a deceased worker, includes the worker's de facto partner only if the worker and the de facto partner lived together as a couple on a genuine domestic basis within the meaning of s32DA <i>Acts Interpretation Act 1954</i>:</p> <p>a) generally —</p> <p>(i) for a continuous period of at least 2 years ending on the worker's death; or</p> <p>(ii) for a shorter period ending on the deceased's death, if the circumstances of the de facto relationship of the deceased and the de facto partner evidenced a clear intention that the relationship be a long term, committed relationship, or</p> <p>b) if the deceased left a dependant who is a child of the relationship — immediately before the worker's death.</p>	<p>Under the Acts <i>Interpretation Act 1954</i>, "spouse" includes a de facto partner or registered partner. For either de facto partner or registered partner, the gender of the person is not relevant.</p>	<p>s28 — Meaning of member of the family — A person is a member of the family of a deceased worker, if the person is —</p> <p>a) the worker's —</p> <p>(i) spouse, or</p> <p>(ii) parent, grandparent and stepparent, or</p> <p>(iii) child, grandchild and stepchild, or</p> <p>(iv) brother, sister, half-brother and half-sister, or</p> <p>b) if the worker stands in the place of a parent to another person — the other person, or</p> <p>c) if another person stands in the place of a parent to the deceased worker — the other person.</p>
Western Australia	S5 — "dependants" means such members of the worker's family as were wholly or in part dependant upon the earnings of the worker at the time of his death, or would, but for the injury, have been so dependant.	<p>s5 — "member of a family" means spouse, de facto partner, parent, grandparent, step-parent; any person who stands in the place of a parent to another person and also that other person, son, daughter, ex-nuptial son, ex-nuptial daughter, grandson, grand-daughter, step-son, step-daughter (whether the step-son or step-daughter is legally adopted by the worker or not), brother, sister, half-brother, half-sister; and with respect to an ex-nuptial worker includes the workers' parents, and his brothers and sisters, whether legitimate or ex-nuptial, who have at least one parent in common with the worker.</p> <p>s5 — "de facto partner"</p> <p>a) a person who, immediately before the death of the worker, was living in a de facto relationship with the worker and had been living on that basis with that worker for at least the previous 2 years; and</p>	<p>No specific reference is provided with regard to same sex relationships. However, same sex de facto relationships have been recognised in Western Australian law since 2002. The <i>Interpretation Act 1984</i> s13A(3)(a) — states, with regard to references to de facto relationships and de facto partners, that "It does not matter whether the persons are different sexes or the same sex."</p>	—



Who is entitled to death benefits Definitions		Reference to same sex relationships	Other relevant information
		<p>b) any former de facto partner of the worker if the worker was legally obliged immediately before the death of the worker to make provision for that former de facto partner with respect to financial matters.</p> <p>s5 — "spouse" includes any former spouse of the worker if the worker was legally obliged immediately before the death of the worker to make provision for that former spouse with respect to financial matters.</p>	
South Australia	s44 — Spouse or domestic partner.	<p>s3 — Spouse — a person is the spouse of another if they are legally married.</p> <p>s3 — Domestic partner — a person is the domestic partner of a worker if he or she lives with the worker in a close personal relationship and</p> <p>a) the person:</p> <p>(i) has been so living with the worker continuously for the preceding period of 3 years, or</p> <p>(ii) has during the preceding period of 4 years so lived with the worker for periods aggregating not less than 3 years, or</p> <p>(iii) has been living with the worker for a substantial part of a period referred to in subparagraph (i) or (ii) and the Corporation considers that it is fair and reasonable that the person be regarded as the domestic partner of the worker for the purposes of this Act, or</p> <p>b) a child, of whom the worker and the person are the parents, has been born (whether or not the child is still living).</p>	<p>Not explicitly, however is included within the broader definition of a domestic partner — s5D, Schedule 1.</p> <p>s3 — Dependant, in relation to a deceased worker, means a relative of the worker who, at the time of the worker's death:</p> <p>a) was wholly or partially dependant for the ordinary necessities of life on earnings of the worker, or</p> <p>b) would, but for the worker's injury, have been so dependant, and includes a posthumous child of the worker, and dependant has a corresponding meaning.</p>
Tasmania	s67 — Dependant spouse or dependant caring partner. Dependant child.	<p>s3 — "caring partner", in relation to a person, means: a) the person who is in a caring relationship with that person which is the subject of a deed of relationship registered under Part 2 of the <i>Relationships Act 2003</i>, or b) the person who was, at the time of the death of the first-mentioned person, in a caring relationship with that person which was the subject of a deed of relationship registered under Part 2 of the <i>Relationships Act 2003</i>.</p> <p>S65: "dependant caring partner" means a caring partner who is a dependant.</p> <p>s3 — "spouse" includes the person with whom a person is, or was at the time of his or her death, in a significant relationship, within the meaning of the <i>Relationships Act 2003</i>.</p> <p>S65 — "dependant spouse" means a spouse who is a dependant.</p> <p>s65 — "child" means a person who: (a) is under the age of 16 years, or (b) is 16 years or more, but less than 21 years and is a full time student.</p> <p>"dependant child" means a child who is a dependant.</p>	<p>Yes, included in s67 as a result of the definitions of spouse and caring partner.</p> <p>s3 — "dependants" means such members of the family of the worker in relation to whom the term is used as: a) were dependant, wholly or in part, upon the earnings of that worker at the time of his death, or b) would have been so dependant but for the incapacity due to the injury.</p> <p>s3 — "member of the family", in relation to a worker, means: a) the spouse, caring partner, father, step-father, grandfather, mother, step-mother, grandmother, son, grandson, daughter, grand-daughter, step-son, step-daughter, brother, sister, half-brother, and half-sister of that worker, or b) a person to whom the worker stood in loco parentis.</p>
Northern Territory	Dependant	<p>Dependant, in relation to a worker, means:</p> <p>a) a spouse or other member of the worker's family</p> <p>b) a person to whom the worker stood in loco parentis or who stood in loco parentis to the worker</p> <p>c) a grandchild of the worker.</p> <p>who was wholly or in part dependant on his or her earnings at the date of his or her death or who would but for the worker's incapacity due to the injury resulting in his or her death, have been so dependant.</p>	<p>No</p> <p><b>Prescribed child</b> means a child of the deceased worker, or child in relation to whom the deceased worker stood in loco parentis, and who:</p> <p>a) has not attained the age of 16 years; or</p> <p>b) having attained that age but not having attained the age of 21 years, is a full-time student or is physically or mentally handicapped, other than such a child who is the spouse of another person.</p>

Who is entitled to death benefits Definitions			Reference to same sex relationships	Other relevant information
				<b>Family</b> , in relation to an Aboriginal or Torres Strait Islander, includes all persons who are members of the person's family according to the customs and traditions of the particular community of Aboriginals or Torres Strait Islanders with which the person identifies.
<b>Australian Capital Territory</b>	s77(2) — Dependants.	<p>Dictionary: dependant of a dead worker, means an individual:</p> <p>a) who was totally or partly dependant on the worker's earnings on the day of the worker's death or who would, apart from the worker's incapacity because of the injury, have been so dependant, and</p> <p>b) who was:</p> <p>(i) a member of the worker's family, or</p> <p>(ii) a person to whom the worker acted in place of a parent or who acted in place of a parent for the worker.</p>	Yes, the definition does not limit the meaning of dependant to a heterosexual relationship.	<p>Dictionary: ember of the family, in relation to a worker or an employer, means the grandchild, child, stepchild, adopted child, sister, brother, half-sister, half-brother, domestic partner, parent, step-parent, mother-in-law, father-in-law or grandparent of the worker or employer.</p> <p>Note: For the meaning of domestic partner, see s169 of the <i>Legislation Act 2001</i>. If a worker has died, the definition of domestic partner elsewhere in the dictionary provides that the term refers to the person who was the worker's domestic partner when the worker died.</p> <p>Dictionary: domestic partner, of a worker who has died, means the person who was the worker's domestic partner when the worker died. Note: This definition qualifies the meaning of domestic partner given by s169 of the <i>Legislation Act 2001</i>.</p>
<b>C'wealth Comcare</b>	s17 — Dependants.	<p>s4 — dependant, in relation to a deceased employee, means:</p> <p>a) the spouse, parent, step parent, father in law, grandparent, child, stepchild, grandchild, sibling or half sibling of the employee, or b) a person in relation to whom the employee stood in the position of a parent or who stood in the position of a parent to the employee, being a person who was wholly or partly dependant on the employee at the date of the employee's death.</p> <p>s4 — Spouse includes:</p> <p>a) in relation to an employee or a deceased employee — a person who is, or immediately before the employee's death was, a de facto partner of the employee, and b) in relation to an employee or a deceased employee who is or was a member of the Aboriginal race of Australia or a descendant of indigenous inhabitants of the Torres Strait Islands — a person who is or was recognised as the employee's husband or wife by the custom prevailing in the tribe or group to which the employee belongs or belonged.</p>	Yes. <a href="#">The Same Sex Relationships (Equal Treatment in Commonwealth Laws-General Law Reform) Act 2008</a> commenced on and from 10 December 2008. It removed discrimination against same-sex couples, their dependants and their dependant children from a wide range of Commonwealth laws including the SRC Act.	—
<b>C'wealth Seacare</b>	s29 — Dependants.	<p>s15(2) — For the purposes of this Act, a person who, immediately before the date of an employee's death, lived with the employee and was: (a) the employee's spouse, or (b) a prescribed child of the employee, is taken to be a person who was wholly dependant on the employee at that date.</p> <p>s3 — Spouse includes: (a) in relation to an employee or a deceased employee — a person who is, or immediately before the employee's death was, a de facto partner of the employee, and (b) in relation to an employee or a deceased employee who is or was a member of the Aboriginal race of Australia or a descendant of indigenous inhabitants of the Torres Strait Islands — a person who is or was recognised</p>	Yes. <a href="#">The Same Sex Relationships (Equal Treatment in Commonwealth Laws-General Law reform) Act 2008</a> commenced on and from 10 December 2008. It removed discrimination against same-sex couples, their dependants and their dependant children from a wide range of Commonwealth laws including the Seafarers Act.	—

Who is entitled to death benefits Definitions		Reference to same sex relationships	Other relevant information
		as the employee's husband or wife by the custom prevailing in the tribe or group to which the employee belongs or belonged.	
<b>C'wealth DVA</b>	s233, s251 and s262 — wholly dependant partner, dependant eligible young person, other dependant	<p>s15 — Dependant means — persons in the following list who are partly or wholly economically dependant on the member (deemed for partners and eligible young persons if living with member — s17):</p> <ul style="list-style-type: none"> <li>• member's partner</li> <li>• member's father, mother, step-father or step-mother</li> <li>• the father, mother, step-father or step-mother of the member's partner</li> <li>• the member's grandfather or grandmother</li> <li>• the member's son, daughter, step-son or step-daughter</li> <li>• the son, daughter, step-son, step-daughter of the member's partner</li> <li>• the member's grandson or grand-daughter</li> <li>• the member's brother, sister, half-brother, or half-sister</li> <li>• a person in respect of whom the member stands in the position of a parent, or</li> <li>• a person who stands in the position of a parent to the member.</li> </ul> <p>s5 — Partner of a member means a person in respect of whom at least one of the following applies:</p> <p>a) if the member is a member of the Aboriginal race of Australia or a descendant of Indigenous inhabitants of the Torres Strait Islands the person is recognised as the member's husband or wife by the custom prevailing in the tribe or group to which the member belongs.</p> <p>b) the person is legally married to the member. A relationship between the person and the member (whether the person and the member are the same sex or different sexes) is registered under a law of a state or territory prescribed for the purposes of s22B of the <i>Acts Interpretation Act 1901</i> as a kind of relationship prescribed for the purposes of that section.</p> <p>c) the person (whether of the same sex or a different sex to the member):</p> <ul style="list-style-type: none"> <li>(i) is, in the Commission's opinion (see ss5(2)), in a de facto relationship with the member, and</li> <li>(ii) is not an ancestor, descendant, brother, sister, half-brother or half-sister of the member (see ss5(3)).</li> </ul>	Yes, see definition of partner — MRCA s5. —
<b>New Zealand</b>	s69(e) — Spouse of partner, children and other dependants.	<p>s18 — Spouse (in relation to deceased claimant) means a person (person A) to whom the claimant is legally married. However, person A is not the spouse of a claimant if:</p> <p>a) person A and the claimant are living apart, and b) the claimant is not contributing financially to person A's welfare.</p> <p>s18(a) — Partner means a person (person A) with whom the claimant is in a civil union or a de facto relationship. However, person A is not the partner of a claimant if:</p> <p>(a) person A and the claimant are living apart, and (b) the claimant is not contributing financially to person A's welfare.</p>	No specific reference, however de facto partner is not defined, and civil unions in New Zealand are recognised in New Zealand for same sex couples. —

Table 4.6: Common law provisions

	Access to common law against employer?	Types of damages	Statutory threshold(s)	Is election of common law irrevocable?	Cap on damages?
<b>New South Wales</b>	<p>Yes (modified). (known as Work Injury Damages "WID").</p> <p>Dust disease sufferers can pursue common law damages against an employer, occupier and/or supplier in accordance with the <i>Dust Diseases Tribunal Act 1987</i> and also continue to receive their statutory benefits under the <i>Workers' Compensation (Dust Diseases) Act 1942</i>.</p> <p>No damages for pure mental harm are available to relatives of an injured or deceased worker unless the relative is also a worker under the Act.</p>	<p>Damages are paid as one lump sum to cover past and future economic loss of earnings only.</p> <p>The amount of weekly benefits already paid must be repaid out of the money awarded.</p> <p>Damages can be reduced if the worker's own negligence contributed to the injury — 1987 Act, Part 5, Division 3.</p>	<p>To be eligible to make a claim for work injury damages, three criteria must be met:</p> <ol style="list-style-type: none"> <li>1. the work injury is a result of the negligence of the employer</li> <li>2. the worker must have at least a 15% WPI, and</li> <li>3. claims for lump sum compensation must be made prior to or at the same time as the work injury damages claim, and must be settled prior to a WID claim being finalised.</li> </ol> <p>A WID claim cannot be started for at least six months after the worker gave notice of the injury to the employer, or not more than three years after the date of injury — 1987 Act, Part 5, Division 3.</p>	No. If a common law claim is not successful, the worker will continue to receive workers' compensation under the statutory scheme.	No
<b>Victoria</b>	<p>Yes (limited).</p> <p>Access to common law is for workers injured on or after 20 October 1999.</p>	<p>Damages for pain and suffering and/or economic loss may be pursued. There are additional requirements to prove a permanent loss of 40% earning capacity to be able to pursue economic loss damages — s134AB.</p> <p>If pain and suffering damages are awarded the amount must be reduced by any lump sum impairment benefit paid — s134AB(36).</p>	<p>To obtain common law damages, a worker must first be granted a 'serious injury' certificate. There are two ways a worker can obtain a 'serious injury' certificate:</p> <ol style="list-style-type: none"> <li>1. During the impairment assessment process, be assessed as having a WPI of 30% or more (can combine physical and mental impairments), or</li> <li>2. WorkSafe or the County Court determines that the worker has a 'serious injury' pursuant to the narrative test — <i>Accident Compensation Act 1985</i> — s134AB.</li> </ol> <p>A worker has the option of having their WPI assessed first or by-passing the impairment assessment process and relying on the narrative test. Either way, the worker must make a serious injury application and have that application accepted or rejected by WorkSafe before they can proceed to the next step.</p> <p>If the worker's impairment assessment is under 30% and/or their serious injury application relying on the narrative test has been rejected, the worker has 30 days to issue County Court proceedings for a Judge to determine whether they have a 'serious injury' on the narrative test — s134AB.</p> <p>A worker can have a 'serious injury' that entitles them to pursue pain and</p>	—	<p>Damages for pain and suffering must not be awarded if the amount is less than \$53 600 — s134AB(22)(b)(i).</p> <p>Maximum amount for pain and suffering damages is \$543 920 — s134AB(22)(b)(ii).</p> <p>Damages for economic loss must not be awarded if the amount is less than \$55 480 — s134AB(22)(a)(i).</p> <p>Maximum amount for economic loss damages is \$1 249 310 — s134AB(22)(a)(ii).</p>

	Access to common law against employer?	Types of damages	Statutory threshold(s)	Is election of common law irrevocable?	Cap on damages?
			suffering damages only and/or economic loss damages. To qualify for serious injury status for economic loss (if serious injury is determined under the narrative test) the worker must prove they have suffered and will continue to suffer a loss of earning capacity of 40% or more —s134AB.		
<b>Queensland</b>	Yes	General damages based on ISV scale — s306O. Cap on economic loss at 3 times QOTE — s306I. No damages available for gratuitous services.	If the worker has WRI of less than 20% or no WRI, the worker must decide to either accept the lump sum payment or seek damages — s189.	Yes	General damages (pain and suffering) capped at \$319 050. Loss of earnings capped at 3 times QOTE (\$3991.50) per week for each week of the period of loss of earnings.
<b>Western Australia</b>	Yes (limited).	Damages available for both economic and non-economic loss.	As of 14 November 2005, access to common law is based on the worker's degree of WPI. The threshold for accessing common law is not less than 15% WPI. Secondary psychological, psychiatric and sexual conditions are excluded — Part IV, Subdivision 3. Causes of action that occurred before 14 November 2004 are dealt with under the old previous law regimes — Part IV, Subdivision 2 — s93D and s93E.	—	Where a worker has a WPI of less than 25% the maximum amount of damages that may be awarded is \$416 569 (indexed annually) — s93K. Unlimited common law is available to a worker with a WPI of greater than 25%.
<b>South Australia</b>	No	N/A	N/A	N/A	N/A
<b>Tasmania</b>	Yes (limited).	Damages available for both economic and non-economic loss.	A worker must suffer at least 20% WPI before he or she can commence proceedings for an award of damages or make an agreement to settle a claim for damages. Note — loss of foetus deemed to be 20% WPI. (s138AB and s71(3)).	N/A	Unlimited (provided 20% WPI threshold met).
<b>Northern Territory</b>	No	N/A	N/A	N/A	N/A
<b>Australian Capital Territory</b>	Yes	Unlimited	Nil	No. Benefits cease on settlement or outcome in favour of the worker. Benefits received prior to settlement are deducted from the damages settlement to avoid the worker receiving double compensation for the same loss.	Unlimited

	Access to common law against employer?	Types of damages	Statutory threshold(s)	Is election of common law irrevocable?	Cap on damages?
<b>C'wealth Comcare</b>	Yes (limited).	Damages for non-economic loss.	To have access to common law the employee must have a successful permanent impairment claim i.e. a benefit payable under the relevant Commonwealth Act — Seafarers Act, s55.	Yes. Employees are able to make an irrevocable election to institute an action or proceedings for damages for non-economic loss under s55 of the Act. No statutory permanent impairment (s39) or non-economic loss (s41) benefits are payable after the date of such an election. However, a damages award does not affect other entitlements, such as weekly benefits, medical costs etc.	Damages shall not exceed \$138 570.52. This amount is not indexed.
<b>C'wealth Seacare</b>	Yes (limited).	Damages for non-economic loss.	To have access to common law the employee must have a successful permanent impairment claim i.e. a benefit payable under the relevant Commonwealth Act — Seafarers Act, s55.	Yes. Employees are able to make an irrevocable election to institute an action or proceedings for damages for non-economic loss under s55 of the Act. No statutory permanent impairment (s39) or non-economic loss (s41) benefits are payable after the date of such an election. However, a damages award does not affect other entitlements, such as weekly benefits, medical costs etc.	Damages shall not exceed \$138 570.52. This amount is not indexed.
<b>C'wealth DVA</b>	Yes (limited).	Damages for non-economic loss.	To have access to common law the employee must have a successful permanent impairment claim i.e. a benefit payable under the relevant Commonwealth Act — s389 MRC Act.	Yes. Able to make an irrevocable election to institute an action or proceedings for damages for non-economic loss under s389 of the MRCA. No statutory permanent impairment benefits are payable after the date of such an election.	Damages shall not exceed \$110 000. This amount is not indexed.
<b>New Zealand</b>	People do not have the right to sue for personal injury, except for exemplary damages.	These damages are punitive, and aimed at punishing the conduct of the offender. They are not intended to compensate for the injury.	No threshold.	—	N/A

**Table 4.7: Suspension and cessation of benefits**

Criteria for suspension of compensation payments	
<b>New South Wales</b>	<ul style="list-style-type: none"> <li>• If a person recovers damages in respect of an injury from the employer liable to pay compensation under this Act then (except to the extent that ss(2), ss(3) or ss(4) covers the case):               <ol style="list-style-type: none"> <li>a) the person ceases to be entitled to any further compensation under this Act in respect of the injury concerned (including compensation claimed but not yet paid), and</li> <li>b) the amount of any weekly payments of compensation already paid in respect of the injury concerned is to be deducted from the damages (awarded or otherwise paid as a lump sum) and is to be paid to the person who paid the compensation, and</li> <li>c) the person ceases to be entitled to participate in any injury management program provided for under this Act or the 1998 Act" — 1987 Act, s151A.</li> </ol> </li> <li>• The insurer may discontinue weekly payments of compensation under this Division if the worker fails to comply with a requirement under this section within 7 days after it is communicated to the worker by the insurer" — 1998 Act, s270(2).</li> <li>• As part of a commutation agreement, a worker may agree that payment of a lump sum removes any liability to make a payment under Division 4 of Part 3 (or s16 of the former Act) in respect of the injury concerned. This Division applies to the agreement for payment of that lump sum as if it were an agreement to commute the liability to pay that compensation to a lump sum. Payment of the lump sum removes any liability to which the agreement of the worker relates" — 1987 Act, s87F(8).</li> <li>• If a worker refuses to submit himself or herself for any examination under this section or in any way obstructs the examination:               <ol style="list-style-type: none"> <li>a) the worker's right to recover compensation under this Act with respect to the injury, or</li> <li>b) the worker's right to the weekly payments, is suspended until the examination has taken place" — 1998 Act, s119(3).</li> </ol> </li> <li>• If a worker has been receiving weekly payments for partial incapacity for more than two years, these payments can be discontinued if the worker:               <ol style="list-style-type: none"> <li>a) is not suitably employed and is not seeking suitable employment or participating in rehabilitation/retraining, or</li> <li>b) is not suitably employed and has previously unreasonably rejected suitable employment, or</li> <li>c) has sought but has failed to obtain suitable employment primarily because of the labour market — 1987 Act, s52A.</li> </ol> </li> <li>• If a worker receiving, or entitled to receive, a weekly payment of compensation under an award ceases to reside in Australia, the worker shall thereupon cease to be entitled to receive any weekly payment, unless an approved medical specialist certifies, or the Workers Compensation Commission determines, that the incapacity for work resulting from the injury is likely to be of a permanent nature" — 1987 Act, s53(1).</li> </ul>
<b>Victoria</b>	A worker's entitlement to compensation and access to court proceedings may be suspended if the worker unreasonably refuses to have a medical examination or unreasonably obstructs a medical examination until the examination takes place and weekly payments may be forfeited for the suspension period — s112.
<b>Queensland</b>	<p>Insurer may suspend compensation if worker:</p> <ul style="list-style-type: none"> <li>• is serving a term of imprisonment — s137</li> <li>• fails to participate in an independent medical examination — s135</li> <li>• fails to participate in rehabilitation — s232, or</li> <li>• fails to participate in an examination by the medical assessment tribunal — s510.</li> </ul> <p>If compensation payments are suspended, no compensation is payable for the period of suspension — s138.</p>
<b>Western Australia</b>	<p>Suspension of payments during custody — s72.</p> <p>Suspension or cessation of payments for failure to undergo medical examination — s72A.</p> <p>Suspension or cessation of payments for failure to participate in return to work program — s72B.</p> <p>If the employer satisfies an arbitrator that there is a genuine dispute as to liability to pay compensation or as to the proper amount of such weekly payments, and in either case of the grounds of the dispute, the arbitrator may order that the payments be suspended for such time as the arbitrator directs or be discontinued or be reduced to such amount as the arbitrator thinks proper or the arbitrator may dismiss the application — s60(2). An Arbitrator also has powers to suspend weekly payments under — s62(2).</p> <p>In the event that compensation is suspended, no compensation is payable during the suspension period — s63.</p> <p>A conciliation officer may direct that weekly payments of compensation are to be suspended or reduced if the conciliation officer considers that it would be reasonable to expect that the resolution or determination of the dispute under this Part would result in the payments being suspended or reduced — s182L.</p>

## Criteria for suspension of compensation payments

<p><b>South Australia</b></p>	<p>Discontinued if dismissed from employment for serious and wilful misconduct — s36(1)(e).</p> <p>Discontinued for break of mutuality — s36(1)(f), including:</p> <ul style="list-style-type: none"> <li>• failure to submit to a medical examination where required by notice — s36(1a)(a)</li> <li>• failure to supply a medical certificate where required by notice — s36(1a)(b)</li> <li>• refusal or failure to submit to proper medical treatment — s36(1a)(c)</li> <li>• refusal or failure to participate in a rehabilitation program or frustrates the objectives of the program — s36(1a)(d)</li> <li>• failure to comply with obligation under rehabilitation or return to work plan — s36(1a)(e)</li> <li>• refusal or failure to undertake work offered and capable of doing or to take reasonable steps to find or obtain employment or unreasonably discontinuing the employment — s36(1a)(f)</li> <li>• refusal or failure to participate in assessments of worker's capacity, rehabilitation progress or future employment prospects — s36(1a)(f), and</li> <li>• anything else recognised as a breach of the obligation of mutuality — s36(1a)(g).</li> </ul> <p>Worker's rights to weekly payments may be suspended by the Corporation until the examination has taken place in accordance with the requirements of the Medical Panel — s98G(5).</p> <p>Suspended whilst a worker is in prison — s116.</p> <p>Suspended under s38(6) if a worker fails to comply with a requirement under s38(5) — submit to medical examination or furnish evidence of earnings.</p> <p>Suspended during absence of a worker from Australia — s41(3).</p>
<p><b>Tasmania</b></p>	<p>A worker's entitlement to compensation may be suspended if the worker unreasonably refuses to submit to a medical examination or undertake any treatment (with the exception of surgical treatment) s90C.</p> <p>An employer may, subject to certain conditions such as providing written notice, terminate or reduce weekly payments where:</p> <ol style="list-style-type: none"> <li>a) the payment is in respect of total incapacity and the worker has returned to work</li> <li>b) the worker is in receipt of the weekly payment in respect of partial incapacity and is receiving weekly earnings in excess of the amount upon which the amount of such weekly payment was determined</li> <li>c) an accredited medical practitioner who has examined the worker has certified that in his/her opinion the worker has wholly or substantially recovered from the effects of the injury or that the worker's incapacity is no longer wholly or substantially due to that injury, or</li> <li>d) a worker's entitlement to weekly payments has expired as provided by s69B(2E) — s86(1).</li> </ol> <p>If a worker does not comply with the requirements of a return to work plan or injury management plan, the matter can be referred to the Tribunal which has the power to suspend compensation — s143E(7) and s143Q(7).</p> <p>A worker ceases to be entitled to weekly compensation whilst serving a term of imprisonment — s82.</p>
<p><b>Northern Territory</b></p>	<p>Where a worker unreasonably fails to undertake medical, surgical and rehabilitation treatment or to participate in rehabilitation training or a workplace based return to work program which could enable him or her to undertake more profitable employment, he or she shall be deemed to be able to undertake such employment and his or her compensation under Subdivision B of Division 3 may, subject to s69, be reduced or cancelled accordingly.</p> <p>Where a worker so required under ss(1) unreasonably refuses to present himself or herself for assessment of his or her employment prospects, he or she shall be deemed to be able to undertake the most profitable employment that would be reasonably possible for a willing worker with his or her experience and skill and who has sustained a similar injury and is in similar circumstances, having regard to the matters referred to in s68, and his or her compensation under Subdivision B of Division 3 may, subject to s69, be reduced or cancelled accordingly.</p> <p>Subject to s69, where a worker unreasonably refuses to have, or unreasonably obstructs, an examination under ss(1), an employer may cancel or reduce the compensation payable to the worker under Subdivision B of Division 3 until the examination takes place.</p> <p>Imprisonment s65A — Residing overseas when rehabilitation not complete s65B. Failing to provide medical certificate. Worker is no longer incapacitated.</p>
<p><b>Australian Capital Territory</b></p>	<p>A worker's entitlement to compensation may be suspended under s113 (compliance by workers), s44 (living outside Australia) or s83 (no compensation while imprisoned) of the <i>Workers Compensation Act 1951</i>.</p>



Criteria for suspension of compensation payments	
<b>C'wealth Comcare</b>	<p>An employee's right to compensation is suspended for unreasonable refusal to:</p> <ul style="list-style-type: none"> <li>• undergo or obstruct a rehabilitation assessment examination — s36</li> <li>• undertake a rehabilitation program — s37, or</li> <li>• undergo or obstruct a medical examination — s57.</li> </ul> <p>For suspensions under s36 or 37, rights to compensation for medical expenses under s16 continue where the suspension commenced on or after 7 December 2011.</p> <p>An employee's right to compensation is suspended for failure to comply with any reasonable requirement of Comcare where Comcare takes over or initiates a 3rd Party recovery action — s50. Should an employee fail to comply with a notice to give information or a copy of a document (s58), Comcare may refuse to deal with the claim.</p>
<b>C'wealth Seacare</b>	<p>An employee's right to compensation is suspended for unreasonable refusal to undergo or obstructs a rehabilitation assessment (s49), to undertake a rehabilitation program (s50) or to undergo or obstructs a medical examination (s66). An employee's right to compensation is suspended for failure to comply with any reasonable requirement of the employer where the employer takes over or initiates a third party recovery action (s59).</p>
<b>C'wealth DVA</b>	<ul style="list-style-type: none"> <li>• Failure to undertake a rehabilitation assessment or program or a medical examination where required, or to comply in relation to third party proceedings, compensation (other than treatment) may be suspended — MRCA s50, s52, s329 and s397.</li> <li>• Suspension of incapacity payments for periods of imprisonment for conviction of an offence — MRCA s122.</li> <li>• Failure to provide certain information may result in refusal to deal with claim — MRCA s330.</li> </ul>
<b>New Zealand</b>	Nil

**Table 4.8 Incapacity benefits settlements**

Coverage	
<b>New South Wales</b>	Yes, some restrictions. Refer Part 3 Division 9 of the 1987 Act.
<b>Victoria</b>	Yes, some restrictions — Division 3A of Part IV ACA.
<b>Queensland</b>	Yes, as calculated under s174 of the Act.
<b>Western Australia</b>	Yes, some restrictions. WorkCover WA Website: <a href="http://www.workcover.wa.gov.au/Workers/Settlements/Default.htm">http://www.workcover.wa.gov.au/Workers/Settlements/Default.htm</a> .
<b>South Australia</b>	Yes, with significant restrictions. Legislative restrictions for a redemption of weekly payments apply. In addition the current position of the WorkCover Board is that there should be no redemptions. This policy only applies to the injured workers of registered employers where their employer is not self-insured.
<b>Tasmania</b>	Yes, some restrictions.
<b>Northern Territory</b>	Yes for incapacity benefits, otherwise able to claim other benefits.
<b>Australian Capital Territory</b>	Yes under s137. Settlement may include pay out of one or more of the following: <ul style="list-style-type: none"> <li>• weekly incapacity benefits</li> <li>• lump sum compensation for permanent injuries</li> <li>• medical treatment, damage and other costs under pt 4.5 of the Act, or</li> <li>• any other amount — s137(2).</li> </ul> A payout of weekly compensation may not be assigned, charged or attached, pass to anyone else by operation of the law or have a claim offset against it — s138.
<b>C'wealth Comcare</b>	Yes, some restrictions — s30.
<b>C'wealth Seacare</b>	Yes, some restrictions — s44.
<b>C'wealth DVA</b>	Yes, some restrictions — s138.
<b>New Zealand</b>	Yes

# Chapter 5: Return to work

Return to work refers to assisting injured workers in staying at/getting back to work. The aim of the return to work/rehabilitation provisions in legislation is to provide for the safe and durable return to work of the injured worker as early as possible with regard to the worker's injury.

The return to work of an injured worker involves the employer and the injured worker and depending on the legislation in each jurisdiction and the severity of the injury may also involve workplace rehabilitation coordinators, workplace rehabilitation providers, medical and other health professionals and the insurer.

Some workers' compensation authorities operate injured worker placement incentive schemes to encourage employers to employ workers who have had an injury and are not able to return to work with their pre-injury employer.

A successful return to work is usually the result of four main factors: early intervention; an effective workplace-based rehabilitation program; effective claims management; and cooperation, collaboration and consultation between stakeholders.

This Section covers the following topics.

- 5.1 Guidance material and sections of the Acts or regulations referring to return to work or rehabilitation.
- 5.2 Responsibilities of employers in relation to return to work including:
  - a) workplace rehabilitation/return to work programs or policies
  - b) injured worker return to work plans
  - c) the provision of suitable duties/employment, and
  - d) other requirements of employers.
- 5.3 Responsibilities of workers in relation to return to work.
- 5.4 Injured worker placements incentive schemes operated by jurisdictional workers' compensation authorities.
- 5.5 Responsibilities of the workers' compensation authorities or insurers.
- 5.6 Functions and training of workplace rehabilitation coordinators.
- 5.7 Workplace rehabilitation providers, including:
  - a) responsibilities, and
  - b) qualifications and fee structure.

**Table 5.1: Sections of workers' compensation Acts and guidance material relating to return to work**

Sections of the Act or regulations referring to return to work		Names and links to guidance material on return to work
<b>New South Wales</b>	Chapter 3, <i>Workplace Injury Management and Workers Compensation Act 1998</i> Part 6, Workers Compensation Regulation 2010.	WorkCover NSW provides information on return to work including return to work coordinators, workplace rehabilitation providers and vocational rehabilitation programs including related documents at <a href="http://www.workcover.nsw.gov.au/injuriesclaims/injurymanagement/Returntowork/Pages/default.aspx">http://www.workcover.nsw.gov.au/injuriesclaims/injurymanagement/Returntowork/Pages/default.aspx</a> . The <a href="#">Guidelines for workplace return to work programs September 2010</a> outlines the employer's obligations.
<b>Victoria</b>	<p>"<i>Accident Compensation Act 1985</i> — Part VIII (Return to Work)  s99 — Compensation for medical and like services.  s99A — Commission or self-insurer may pay for rehabilitation services.  s189 — Purpose190 — Obligations of employers and workers.  s191 — Part does not derogate from other provisions in Act.  s192 — Definitions  s101(1) — Employer to keep register of injuries.  s193 — Application of part.  Division 2 — Obligations of employers.  s194 — Provide employment.  s198 — Plan Return to Work.  s196 — Consult about Return to Work.  s197 — Nominate a Return to Work Coordinator.  s198 — Make return to workInformation available.  s199 — Host to cooperate with labour hire employer.  Division 3 — Obligation for workers.  s200 Participate in planning for return to work.  s201 — Use occupational rehabilitation services.  s202 — Participate in assessments.  s203 — Return to work.  s204 — Participate in an interview.  Division 4 — Termination of compensation.  s205 — Failure to comply with Division 3.  s206 — Notification of return to work.  Division 5 — General Provisions.  s207 — Resolution of return to workissues.  s208 — Information about the employer obligation period.  s209 — Authority may be given.  s210 — Compliance Codes.  s211 — Effect of Compliance Code.  s212 Disallowance of certain compliance code orders.  s213 — Effect of compliance with compliance codes.  s213A — Functions of Authority in respect of compliance codes.  s214 — Provisions applying directions issued by the Minister.  s214A — Disallowance of certain Ministerial Directions.  Division 6 — Return to Work Inspectorate.  Subdivision 1 — Appointment of Inspectors (s214B to s216).  Subdivision 2 — Performance of functions or exercise of powers (s217 to s233).  Subdivision 3 — Offences (s234 to s235).  Subdivision 4 — Review of decisions (s236 to s236B).  s242AA — Offence to engage in discriminatory conduct".</p>	<p><a href="#">Labour hire and return to work — information for employers (WSV1344/01/06.10).</a>  <a href="#">Return to work coordination the basics you need to know (WSV1343/02/02.11).</a>  <a href="#">Return to work inspectors helping employers get back to work (WSV1342/02/02.11).</a>  <a href="#">Return to work obligations information for workers (WSV1341/02/03.11).</a>  <a href="#">Returning to work guide for injured workers (WSV1153/03/02.11).</a>  <a href="#">Steps to resolving return to work issues (WSV1347/02/02.11).</a>  <a href="#">What to do if a worker is injured — a guide for employers (WSV696/06/02.11).</a>  <a href="#">Return to work arrangements (FOR699/05/03.11).</a>  <a href="#">Suitable employment for injured workers — a step by step guide to assessing suitable employment options (FOR726/03/03.11).</a>  <a href="#">Information for employers — compliance codes (WSV 1425/01/ 03.11).</a>  <a href="#">Information for employers — Return to Work Coordinator fact sheet (WSV 1342/02/02.11).</a>  <a href="#">Return to Work Compliance codes 1 (WCC011/01/02.11).</a>  <a href="#">Return to Work Compliance codes 2 (WCC010/01/02.11).</a>  <a href="#">Return to Work Compliance codes 3 (WCC009/01/02.11).</a>  <a href="#">Return to Work Compliance codes 4 (WCC012/01/02.11).</a>  <a href="#">Employer Obligation fact sheet.</a>  <a href="#">Original Employer Services — Information for workers.</a>  <a href="#">New Employer Services — Information for workers.</a>  <a href="#">WISE info sheet — workers.</a>  <a href="#">WISE info sheet — employers.</a>  <a href="#">Return to Work Ministerial Direction No 1 — Issue Resolution.</a>  <a href="#">Return to Work Ministerial Direction No 2 — Informing workers of their employers obligation to provide employment.</a>  <a href="#">Workplace Support Service.</a>  <a href="#">Return to Work Inspector fact sheet.</a></p>

Sections of the Act or regulations referring to return to work		Names and links to guidance material on return to work
<b>Queensland</b>	Act s220 — Insurers responsibility for rehabilitation. s221 — Authority's responsibility for rehabilitation. s228 — Employer's obligation to assist or provide rehabilitation. Reg s101–110 Standard for rehabilitation.	Q-COMP provides rehabilitation and return to work information in the <a href="#">Return to Work Zone</a> . It has also published the guide <a href="#">Helping you get the measure of workplace rehabilitation</a> .
<b>Western Australia</b>	Workers' Compensation Code of Practice (Injury Management) 2005: c11–9; Act — s3, s5(1), s64, s65, s72B, s84AA(1), s84AB, Part IX, Part IXA.	Publications: <a href="#">Injury Management: A Guide for Employers</a> . <a href="#">Workers' Compensation Code of Practice (Injury Management) 2005</a> . <a href="#">Template Return to Work Program</a> . <a href="#">Guide to the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers</a> . Website info: <a href="#">Returning to work: main section</a> . <a href="#">Returning to work: obligations of the key parties</a> . <a href="#">List of approved workplace rehabilitation providers</a> .
<b>South Australia</b>	s26 — Rehabilitation Programs. s27 — Clinics and Other Facilities. s28 — Rehabilitation Advisors. s28A — Rehabilitation and Return to Work Plans. s28B — Review of Plan. s28C — Rehabilitation standards and requirements. s28D — Rehabilitation and return to work coordinators.	<a href="#">WorkCover Rehabilitation and return to work coordinator training and operational guidelines</a> . Fact sheets are also available on the <a href="#">WorkCoverSA website</a> .
<b>Tasmania</b>	Part XI of the <i>Workers Rehabilitation and Compensation Act 1988</i> deals with injury management.	<a href="#">Return to Work and Injury Management Model</a> . <a href="#">Helping People Return to Work</a> . <a href="#">The Role of the Injury Management Coordinator</a> . <a href="#">The Role of the Return to Work Coordinator</a> . <a href="#">Sample Return to Work Plan</a> . <a href="#">Guideline for preparing Return to Work Plans and Injury Management Plans</a> . <a href="#">The Role of the Primary Treating Medical Practitioner</a> . <a href="#">The Role of the Workplace Rehabilitation Provider</a> . <a href="#">Developing an Injury Management Program</a> . <a href="#">Tasmanian Additional Requirements to operate as a Workplace Rehabilitation Provider</a> . <a href="#">Transitional arrangements for the accreditation of Workplace Rehabilitation Providers</a> .
<b>Northern Territory</b>	Employer must take all reasonable steps to provide injured worker with suitable employment. Worker must cooperate with reasonable return to work and treatment program s75A and s75B. Accredited Vocational Rehabilitation Providers s50.	<a href="#">Employers Managing Rehabilitation</a> . <a href="#">Workers Getting Back to Work</a> . <a href="#">Alternative Employer Incentive Scheme</a> . <a href="#">Medical Practitioners Workers Compensation Guide</a> .

Sections of the Act or regulations referring to return to work		Names and links to guidance material on return to work
		<a href="#">Accredited Vocational Rehabilitation Providers</a> .
<b>Australian Capital Territory</b>	<a href="#">Chapter 5 of the <i>Workers Compensation Act 1951</i></a> .	<a href="#">Chapter 5 of the <i>Workers Compensation Act 1951</i></a> .
<b>C'wealth Comcare</b>	<i>Safety, Rehabilitation and Compensation Act 1988</i> — Part III, s36 to s41A.	<a href="#">Injury management</a> . <a href="#">Guidelines for Rehabilitation Authorities 2012</a> ).
<b>C'wealth Seacare</b>	Part 3 — s48 to s52.	<a href="#">A best practice guide Seafarers Rehabilitation and Return to Work</a> . <a href="#">Short version</a> .
<b>C'wealth DVA</b>	MRCA — s37 to s64.	<a href="#">Rehabilitation services in DVA</a> .
<b>New Zealand</b>	s70 to s113 — <i>Accident Compensation Act 2001</i> .	

Table 5.2a: Requirement to have a workplace rehabilitation/ return to work program or policy

	Employers required to have a return to work program or policies?	Do requirements differ for different categories of employers?	Exemptions from return to work programs	Requirements for development of programs/ policies (e.g. in consultation with workers)	Requirements for display and availability to workers	Return to work program should include	Further information
<b>New South Wales</b>	Yes. s52 of the 1998 Act.	Yes. Refer Part 6 Workers Compensation Regulation 2010.	Yes. Refer Clause 26 Workers Compensation Regulation 2010.	Yes. s52 of the 1998 Act.	Yes. Refer Clauses 21 and 22 Workers Compensation Regulation 2010.	<p>Must cover the following key areas:</p> <ul style="list-style-type: none"> <li>preventing workplace injuries and illness</li> <li>how the return to work program was developed and implemented including relevant information and training strategies for the workforce</li> <li>consulting with workers and any industrial unions representing those workers</li> <li>early commencement of injury management and early return to work</li> <li>providing suitable duties and/or vocational retraining/job placement assistance, and</li> <li>returning to work not to disadvantage injured workers.</li> </ul>	<p><a href="#">Guidelines for workplace return to work programs.</a></p> <p><a href="#">Standard return to work program.</a></p>
<b>Victoria</b>	Yes — s194 to s198 — required to plan return to work for injured worker and consult on this; to have a return to work coordinator for duration of return to work obligations or at all times if has \$2 125 000 rateable remuneration and to make return to work information available to all workers regardless of organisation size.	No. except in relation to return to work coordinator being required at all times or for duration of individual claim based on remuneration (s197).	No	Yes. Employer must consult with workers as to how return to work information is to be made available.	Yes. An employer must make the return to work information available to workers but the Act does not specify how, only that the workers must be consulted about how.	<p>The return to work information that employers are required to make available to their workers should contain the following elements:</p> <ol style="list-style-type: none"> <li>the obligations of the employer under the return to work Part of the <i>Accident Compensation Act 1985</i> and how the employer is meeting the obligations, and</li> <li>the rights and obligations of workers under the return to work Part of the <i>Accident Compensation Act 1985</i> and how workers can obtain further information about the rights and obligations, and</li> <li>the name and contact details of the authorised agent selected by the employer, and</li> <li>the name and contact details of the return to work coordinator, if applicable, and</li> <li>the procedure for resolving return to work issues as specified in s207.</li> </ol>	<p><a href="#">Return to Work Compliance Code 3 — Return to Work Information.</a></p> <p><a href="#">"Return to Work Information Template".</a></p>
<b>Queensland</b>	Yes. An employer must have a Return To Work (workplace rehabilitation) policy and procedures if they meet the criteria specified under a regulation. They must also	Yes, if the employer is in a high risk industry there is a lower wage threshold to meet the criteria for needing policy and procedures	Yes, employers in a high risk industry with declared wages less than \$2.146m, and all other employers with declared wages of less	No, there is no requirement for the policy and procedures to be developed in consultation with workers.	No	<p>Workplace rehabilitation policies and procedures accredited by Qcomp which outline:</p> <ul style="list-style-type: none"> <li>employer commitment to assist injured workers to access necessary treatment and</li> </ul>	<p><a href="#">Workplace Rehabilitation Policy and Procedures.</a></p>

	Employers required to have a return to work program or policies?	Do requirements differ for different categories of employers?	Exemptions from return to work programs	Requirements for development of programs/ policies (e.g. in consultation with workers)	Requirements for display and availability to workers	Return to work program should include	Further information
	review the policy and procedures every 3 years (Act s227 and Reg s99D).	and a Rehabilitation and Return to Work Coordinator (Reg s99D).	than \$7,049m, do not need a workplace rehabilitation policy and procedure (Reg s99D). (The threshold amount varies each year by movements in QOTE: Qld Ordinary Time Earnings).			rehabilitation, and <ul style="list-style-type: none"> <li>Specific steps employer will take to achieve safe, timely and durable return to work.</li> </ul>	
<b>Western Australia</b>	Yes. s155B and Workers' Compensation Code of Practice (Injury Management) 2005. Employers must establish and implement and Injury Management System.	No. s155B and Workers' Compensation Code of Practice (Injury Management) 2005.	No. s155B and Workers' Compensation Code of Practice (Injury Management) 2005.	No	Yes. Code — cl6.	Code — cl6 states that the document describing the injury management system has to include: <ol style="list-style-type: none"> <li>a description of the steps the employer will take when an injury occurs at the employer's workplace</li> <li>details of the person who is have the day to day responsibility for the injury management system, and how to contact that person.</li> </ol>	<a href="#">Workers' Compensation Code of Practice (Injury Management) 2005.</a>
<b>South Australia</b>	Rehabilitation Procedure is required for all employers who have 30 or more employees. s28D(5)(b) — Requires compliance with training or operational guidelines published by WorkCover, and the <a href="#">WorkCover Rehabilitation and return to work coordinator training and operational guidelines</a> requires that a Rehabilitation Procedure is implemented.	No	Employers with less than 30 employees are not required to have a Rehabilitation Procedure.	The Rehabilitation Procedure "must be signed off by a person who has the authority to commit the employer to the procedures". <a href="#">WorkCover Rehabilitation and return to work coordinator training and operational guidelines</a> .	<a href="#">WorkCover Rehabilitation and return to work coordinator training and operational guidelines</a> . Require the procedure to be displayed in the workplace and made available to all workers.	Must include process for early notification of injuries, contact details and functions and responsibilities of coordinators, rights and responsibilities of injured workers, roles and responsibilities of managers, supervisors and co-workers in the rehabilitation and return to work process.	<a href="#">WorkCover Rehabilitation and return to work coordinator training and operational guidelines</a> . Fact sheets are also available on the <a href="#">WorkCover website</a> .
<b>Tasmania</b>	Yes. Insurers and employers are required to ensure that there is an approved Injury Management Program in place in respect of each employer and to comply with it — s142. The process for development and approval of Injury Management Programs is in s143.	No	No	s142(1) — The WorkCover Tasmania Board can issue Guidelines setting out the matters to be included in an Injury Management Program The Guidelines state that an Injury Management Program should be developed in consultation with all parties.	The Guidelines indicate that an Injury Management Program should be readily available in the employer's workplace where the workers can readily refer to it.	Injury Management Program should include: an injury management policy including statement of commitment and objectives, statement of roles and responsibilities of all parties, procedures in relation to information and communication management, Insurer procedures for managing the roles of Injury Management Coordinator, workplace rehabilitation provider and return to work coordinator, mechanisms to facilitate early reporting and intervention and procedures relating to medical management.	<a href="#">Guidelines for developing an Injury Management Program</a> .



	Employers required to have a return to work program or policies?	Do requirements differ for different categories of employers?	Exemptions from return to work programs	Requirements for development of programs/ policies (e.g. in consultation with workers)	Requirements for display and availability to workers	Return to work program should include	Further information
<b>Northern Territory</b>	Not legislated.	Not legislated.	Not legislated.	Not legislated.	Not legislated.	Not legislated.	Not legislated.
<b>Australian Capital Territory</b>	Yes. S109 <i>Workers Compensation Act 1951</i> .	No	No	The return to work program must be developed in consultation with: workers to whom it relates, unions representing the workers and approved rehabilitation provide. s109 <i>Workers Compensation Act 1951</i> .	Yes — s109 (2).	s109(3) provides that the return to work program must provide polices and procedures for rehabilitation and be consistent with insurer's injury management program, be established in accordance with any guidelines issued by the Minister.	<a href="#">Workers Compensation Act 1951.</a>
<b>C'wealth Comcare</b>	Yes. ss41A(2) of the <i>Safety, Rehabilitation and Compensation Act 1988</i> requires rehabilitation authorities to comply with any guidelines issued under ss41(1). Return to work plans are covered in the Guidelines for Rehabilitation Authorities 2012; Attachment A — Performance Chapter 4 — Part 11 Rehabilitation Program.	Yes — The Guidelines for Rehabilitation Authorities 2012 state on page 23, that the level of sophistication and detail in the rehabilitation management system is dependent upon the risk profile of the employer's industry, employee numbers, nature and location of employment premises, and the frequency of injuries warranting rehabilitation assessments and rehabilitation programs.	No	No. The Guidelines for Rehabilitation Authorities 2012 promote ongoing consultation and communication of relevant information with employees regarding rehabilitation.	Yes	Yes. The rehabilitation policy should: a) aim to achieve safe maintenance at work or timely return to work of injured employees through early appropriate intervention b) commit organisation to providing suitable duties in order to maintain the employee at work or enable early return to work c) responsibilities of managers in relation to rehabilitation programs and provision of suitable duties d) rights and responsibilities of employees in rehabilitation programs e) outline assistance available to help injured employee to remain at or return to work f) provide for ongoing communication with employee while absent so connection with the workplace can be maintained g) provide for cost of workplace injury to be monitored and rehabilitation program effectiveness to be evaluated h) describe the service delivery requirements of approved rehabilitation program providers i) provide for evaluation of the policy's implementation and its update so it remains effective and achieves aims.	<a href="#">Guidelines for Rehabilitation Authorities 2012.</a>

	Employers required to have a return to work program or policies?	Do requirements differ for different categories of employers?	Exemptions from return to work programs	Requirements for development of programs/ policies (e.g. in consultation with workers)	Requirements for display and availability to workers	Return to work program should include	Further information
<b>C'wealth Seacare</b>	No	N/A	No	In consultation with the employee, employer, rehabilitation provider and medical practitioner.	N/A		<a href="#">A best practice guide: Seafarers Rehabilitation and Return to Work.</a>
<b>C'wealth DVA</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>New Zealand</b>	N/A	No	No	N/A	No	N/A	N/A

Table 5.2b: Return to work plans — Individual return to work plans

	Responsibility for ensuring that a return to work plan is in place	When is a return to work plan or injury management required?	Contents of the plan	Further information	Requirement to have a separate injury management plan
<b>New South Wales</b>	<p>Insurer is responsible for the development of an injury management plan — s45 of the 1998 Act.</p> <p>As part of the injury management plan an employer is responsible for the development of a return to work plan.</p>	<p>If worker sustains significant injury i.e. workplace injury that is likely to result in the worker being incapacitated for work for a continuous period of more than 7 days, whether or not any of those days are work days and whether or not the incapacity is total or partial or a combination of both the insurer is responsible for the development of an injury management plan. Refer s45 1998 Act.</p>	<p>The injury management plan outlines services required to assist a worker to recover and return to work. Includes details about treatment, rehabilitation and retraining. It is developed in consultation with the worker and employer, and outlines the actions and obligations for each participant.</p>	<p>An employer is to develop a return to work plan for each worker who returns to work on suitable employment. For details of the plan refer to <a href="#">Guidelines for workplace return to work programs</a>.</p>	<p>If injury is a significant injury then insurer must establish an injury management plan.</p>
<b>Victoria</b>	<p>Employer — s194 (provide employment) and s195 (plan return to work).</p>	<p>Employer must plan a worker's return to work from the date on which the employer knows or ought reasonably to have known of worker's incapacity, whichever is the earlier date. s194 — Defines this start date as the earliest of the following dates:</p> <ul style="list-style-type: none"> <li>• the date the employer receives the worker's medical certificate (issued in accordance with s105(1), or</li> <li>• the date the employer receives a claims for compensation from the worker in the form of weekly payments, or</li> <li>• the date the employer is notified by the authority that the worker has made a claim for compensation in the form of weekly payments, or</li> <li>• the date the employer is notified by the Authority that the worker has provided the Authority with a medical certificate issued in accordance with s105(1).</li> </ul>	<p>Once suitable or pre-injury employment has been confirmed, employers must provide the worker with details of the return to work arrangements. The details of the return to work arrangements must be clear, accurate and up to date. Employers should include (but not limit themselves to including) details about:</p> <ul style="list-style-type: none"> <li>• the suitable employment being provided including modified or alternative duties that accommodate restrictions identified in medical information available such as Certificates of Capacity</li> <li>• commencement time and date</li> <li>• details of any tasks or duties the worker needs to avoid</li> <li>• the hours of work and the place of work</li> <li>• work breaks, rotations or exercise breaks</li> <li>• support, aids or modifications to the workplace to assist the worker's return to work</li> <li>• the Return to Work Coordinator contact details</li> <li>• details of the worker's supervisor or manager when returning to work, and</li> <li>• the review date (reviews may occur earlier than this date as appropriate).</li> </ul> <p>An employer must communicate the details of the return to work arrangements to the worker or other relevant parties in a way that is most appropriate for the worker and the other parties. Providing the worker with this information in writing is one way to comply, but it is not mandatory to do so. However, this may not always be adequate and other approaches may be required such as talking through the return to work arrangements with the worker.</p>	<p><a href="#">Return to work Compliance Code 1: Providing employment, planning and consulting about return to work</a>.</p>	<p>No</p>
<b>Queensland</b>	<p>Act s220 — The insurer, in consultation with worker, employer and treating medical professionals.</p> <p>Reg s106A — An employer must develop a suitable duties program for a worker undertaking rehabilitation (as an element of the rehabilitation and return to work plan).</p>	<p>Reg s106 (1) — A rehabilitation and return to work plan must be developed for all workers undertaking rehabilitation.</p>	<p>Reg s106 — The plan must contain clear and appropriate objectives with ways of achieving the objectives; details of rehabilitation needed to meet the objectives; the time frames for rehabilitation; review mechanisms and dates for review and progress to date.</p>	<p>Workplace Rehabilitation Standards.</p>	<p>No</p>

	Responsibility for ensuring that a return to work plan is in place	When is a return to work plan or injury management required?	Contents of the plan	Further information	Requirement to have a separate injury management plan
<b>Western Australia</b>	The Employer — Act s155C; Code — cl7.	s155C — As soon as practicable after <ul style="list-style-type: none"> <li>the treating doctor indicates the need for a return to work program, or</li> <li>the worker's doctor signs a medical certificate to the effect that the worker has partial capacity for work or has total capacity but is unable to return to their pre-injury position for some reason.</li> </ul>	cl8(1)(a) — (d): (a) Names of the injured worker and the employer, and any other details needed to identify them; (b) Description of the goal of the program; (c) List of the action to be taken to enable return to work, identifying who has to take each action; and (d) A statement as to whether the worker agrees with the content of the program.	<a href="#">Injury Management: A Guide for Employers.</a>	No. A return to work program is an individualised program. An Injury Management System is developed by the employer for all workers describing the steps to be taken if an injury occurs.
<b>South Australia</b>	The Corporation has the responsibility under s28A of the Act.	s28A(2) — A Return to Work Plan is required when a worker; "(a) is receiving compensation by way of income maintenance, and (b) is (or likely to be) incapacitated for work by a compensable injury for more than 13 weeks (but has some prospect of returning to work)".	Regulation 23 of the <i>Workers Rehabilitation and Compensation Regulations 2010</i> defines the standards and requirements of Rehabilitation and Return to Work Plans: The plan must specify: worker name, date of birth, claim number, employer name, nature of injury, date of injury.  Objectives: a return to work at the earliest practicable time to suitable employment, return to work aligned to pre injury employer or new employer, and suitable employment to be specified on the Rehabilitation and Return to Work Plans.  The Rehabilitation and Return to Work plan must specify action the worker and pre injury employer/workplace must undertake to achieve plan objectives eg training, workplace modifications. Other inclusions are: rehabilitation services provided to worker, commencement and completion period, review times and the prescribed "Important Notice to Employers" and "Important Notice to Workers".	s28C of the WRC Act and <i>Workers Rehabilitation and Compensation Regulations 2010</i> .  <a href="#">Rehabilitation and Return to Work Plan.</a>  <a href="#">Rehabilitation Program.</a>  <a href="#">Rehabilitation: A guide for injured workers.</a>	No. An Injury Management Plan is not required in South Australia.
<b>Tasmania</b>	The injury management coordinator — s143E.	s143E — A return to work plan is required if the worker is, or is likely to be, totally or partially incapacitated for work for more than 5 working days but less than 28 days. An injury management plan is required if the worker is, or is likely to be, totally or partially incapacitated for work for more than 28 days.	Contact details for: the worker, worker's supervisor or return to work coordinator, the primary treating medical practitioner; and the injury management coordinator.  Details of the worker's employment, medical assessment, capacity to work, any current return to work or injury management plan that the worker has been participating in, medical management, barriers or impediments to return to work, suitable duties identified and available, return to work /injury management goals, strategies for achieving goals and agreement to comply with the plan from the worker and employer.	<a href="#">Guideline for Preparing Return to Work Plans and Injury Management Plans (G—020).</a>  <a href="#">Return to Work Plan/Injury Management Plan — Sample.</a>	s143E — Yes. An injury management plan is required if the worker is, or is likely to be, totally or partially incapacitated for work for more than 28 days.
<b>Northern Territory</b>	Not Legislated.	Not Legislated.	Not Legislated.	Not Legislated.	Not Legislated.
<b>Australian Capital Territory</b>	The insurer carries the primary responsibility under s97 <i>Workers Compensation Act 1951</i> .	s97 <i>Workers Compensation Act 1951</i> — all significant compensable injuries (incapacity for seven days or more) must have a personal injury plan. If the worker is not back at work in pre-injury duties at pre-injury hours by 4 weeks post injury	The plan is for coordinating and managing the aspects of injury management that relate to medical treatment and rehabilitation services for the worker to achieve a timely, safe and durable return to work. The content of the plan is not prescribed.	<a href="#">Workers Compensation Act 1951.</a>	The return to work plan and the injury management plan are integrated into the personal injury plan.

	Responsibility for ensuring that a return to work plan is in place	When is a return to work plan or injury management required?	Contents of the plan	Further information	Requirement to have a separate injury management plan
		notification a rehabilitation provider must be appointed — s99A <i>Workers Compensation Act 1951</i> ).			
<b>C'wealth Comcare</b>	The employer (defined in s4 as the rehabilitation authority) — ss37(1).	The Guidelines for Rehabilitation Authorities 2012 see paragraph 17.2 state that the case manager, in identifying the potential for early rehabilitation intervention, should have regard to: (a) — (h), including unplanned workplace absences of 3 or more days.  When a rehabilitation authority makes a determination that an employee should undertake a rehabilitation program — ss37(1).	The Guidelines see Chapter 4, Part II — Rehabilitation Program state the purpose of a rehabilitation program (return to work plan) is to deliver structured activities and services that assist an employee to be maintained at or return to work and/or maintain or improve the performance of activities of daily living.	<a href="#">Guidelines for Rehabilitation Authorities 2012.</a>	No
<b>C'wealth Seacare</b>	The employer — s50(1).	s49 (1) — If the injury lasts, or is expected to last 28 days or more.	Where practical: • suitable employment • an outline of steps by the employer or on the employers behalf, and • a start and review date.	<a href="#">A best practice guide: Seafarers Rehabilitation and Return to Work.</a>	No
<b>C'wealth DVA</b>	s39 — The rehabilitation authority who at a time is: (a) the person's service chief for a time when the person: (i) is a Permanent Forces member or a continuous full-time Reservist; and (ii) has not been identified by or on behalf of the person's service chief as being likely to be discharged from the Defence Force for medical reasons; or (b) the MRCC for any other time.	s51 — Rehabilitation Authority may determine that the person is to undertake a rehabilitation program if an assessment has been made of the person's capacity for rehabilitation.	s5 — A program that consists of or includes any one or more of the following: (a) medical, dental, psychiatric and hospital services, (b) physical training and exercise, (c) physiotherapy, (d) occupational therapy, (e) vocational assessment and rehabilitation, (f) counselling, and (g) psycho-social training.  s5 — Vocational assessment and rehabilitation consists of or includes any one or more of the following: (a) assessment of transferable skills, (b) functional capacity assessment, (c) workplace assessment, (d) vocational counselling and training, (e) review of medical factors, (f) training in resume preparation, job-seeker skills and job placement, and (g) provision of workplace aids and equipment.	<a href="#">Rehabilitation services in DVA .</a>	No
<b>New Zealand</b>	The Injured Employee — s70. Claimant's and Corporation's obligations in relation to rehabilitation. A claimant who has suffered personal injury for which they have cover: a) is entitled to be provided with rehabilitation, to the extent provided by this Act, to assist in restoring health, independence, and participation to the maximum extent practicable, but b) is responsible for their own rehabilitation to the extent practicable having regard to the consequences of their injury.	s86 — After an assessment has been done and the corporation decides that it is reasonably practicable to return the injured employee to the same employment in which they were engaged.	Various forms of Rehabilitation based on type of injury, severity, duties normally performed.	—	—

Table 5.2c: Suitable duties

	What constitutes suitable duties	Any time limits on the provision of suitable employment?	Does the employer have an obligation to hold the injured worker's former position open? For how long?	Exemptions	Requirement for the employer to notify the authority before dismissing the injured worker?
<b>New South Wales</b>	Suitable duties are short-term work duties, agreed between the employer and the injured worker to assist the injured worker's rehabilitation. Refer s43A of the 1987 Act.	No	Yes — 2 years. S247 of the 1987 Act.	Yes — s248 (3) of the 1987 Act.	No
<b>Victoria</b>	Suitable employment means work that is suited to the worker's current abilities taking into account their capacity for work and, amongst other things, their medical condition, age, skills, work experience, place of residence and pre-injury employment.  Pre-injury employment means employment that is the same as, or equivalent to, the job that a worker was employed in before they sustained their injury or illness (see definitions in s5(1) and s192).	52 weeks of the worker's incapacity.	52 weeks of the worker's incapacity. For the duration of the employment obligation period the employer has to provide suitable employment if the worker has a current work capacity and pre-injury if the worker no longer has an incapacity for work.	Yes — s193.	No
<b>Queensland</b>	Act s42 — Suitable duties are work duties for which the worker is suited, having regard to: a) nature of the worker's incapacity and pre-injury employment b) relevant medical information c) rehabilitation and return to work plan for the worker d) provisions of the employer's workplace rehabilitation policy and procedures e) worker's age, education, skills and work experience; (f) if duties are available at a location other than the location in which the worker was injured — whether it is reasonable to expect the worker to attend the other location, and g) any other relevant matters.	No. The employer has an obligation to provide rehabilitation, which includes suitable duties, while the worker is receiving workers' compensation — Act s228. Weekly payments stop when the workers' incapacity stops, or after the worker has received compensation for 5 years, or when the maximum compensation payment is reached — Act s144).	Yes. The employer must hold the worker's former position open for 12 months (the employer must not dismiss the worker solely or mainly because the worker is not fit for employment in a position because of the injury within 12 months of the worker sustaining the injury) — Act s232B.	No	No
<b>Western Australia</b>	Employer required to provide pre-injury position to injured worker if worker attains total or partial capacity within 12 months. If that job is no longer available, or worker can no longer perform, employer must offer a similar position for which worker is qualified, and capable of doing — s84AA(1).  Employers are required to notify worker and WorkCover WA of any intention to dismiss the worker 28 days before the dismissal is due to take place — s84AB.	Previous position offered if reasonably practicable to do so.	Yes — 12 months.	Yes, if the employer proves that the worker was dismissed on the grounds of serious or wilful misconduct — s84AA(2).	Yes — s84AB.
<b>South Australia</b>	s3 of the Act states; "suitable employment, in relation to a worker, means employment in work for which the worker is currently suited, whether or not the work is available, having regard to the following: (a) the nature of the worker's incapacity and previous employment, (b) the worker's age, education, skills and work experience, (c) the worker's place of residence, (d) medical information relating to the worker that is reasonably available, including in any medical certificate or report, (e) if any rehabilitation programs are being provided to or for the worker, and (f) the worker's rehabilitation and	There is no time limit except under s58B(2)(e) which limits responsibility for providing suitable employment if: • "the employer currently employs <10 employees, and • the period that has elapsed since the	No. However, the employer must continue to provide suitable employment unless exempted under s58B(2).	s58B(2) States the requirement to provide suitable employment does not apply in the following circumstances; (a) it is not reasonably practicable to provide employment in accordance with that subsection; or (b) the worker left the employment of that employer before the commencement of the incapacity for work; or (c) the worker terminated the employment after the commencement of the incapacity for work; or (e) the employer currently employs less than 10 employees, and	The employer must provide at least 28 days notice to the Corporation of the intention to terminate a worker under s58C(1).

What constitutes suitable duties	Any time limits on the provision of suitable employment?	Does the employer have an obligation to hold the injured worker's former position open? For how long?	Exemptions	Requirement for the employer to notify the authority before dismissing the injured worker?	
return to workplan, if any."	worker became incapacitated for work is > 1 year."		the period since worker became incapacitated for work is more than 1 year.		
<b>Tasmania</b>	Suitable alternative duties, in relation to a worker, are those duties for which the worker is suited, having regard to the following: nature of the worker's incapacity and pre-injury employment; worker's age, education, skills and work experience; worker's place of residence; any suitable duties for which worker has received rehabilitation training; and any other relevant circumstances. Suitable alternative duties specifically exclude duties that are merely of a token nature or do not involve useful work having regard to the employer's trade or business; or duties that are demeaning in nature having regard to the worker's incapacity, pre-injury employment, age, education, skills and work experience and to the worker's other employment prospects (s143M(5)).	No	Yes — for a period of 12 months commencing on the day on which the worker becomes totally or partially incapacitated by a workplace injury — s143L(1).	Yes. The employer does not have to hold the worker's position open if: there is medical evidence indicating that it is highly improbable that the worker will be able to perform the employment in respect of which the worker was engaged immediately before becoming incapacitated; or the work for which the worker was employed is no longer required to be performed — s143L(2).	No
<b>Northern Territory</b>	s68 — Assessment of most profitable employment. In assessing what is the most profitable employment available to a worker for the purposes of s65 or reasonably possible for a worker for the purposes of s75B(3), regard shall be had to: a) his or her age b) his or her experience, training and other existing skills c) his or her potential for rehabilitation training d) his or her language skills e) in respect of the period referred to in s5(2)(b)(i) — the potential availability of such employment f) the impairments suffered by the worker; and g) any other relevant factor.	No	No for both, but must take all reasonable steps to provide suitable employment.	Not Legislated.	Not Legislated.
<b>Australian Capital Territory</b>	Suitable duties are not defined.	s105 within 6 months after the day the worker became entitled to weekly compensation.	The employer has an obligation to provide duties for up to six months (s105 <i>Workers Compensation Act 1951</i> ).	The employer does not have an obligation to provide duties if (s106(4) <i>Workers Compensation Act 1951</i> ): • worker leaves voluntarily after the injury • employer ends worker's employment after the injury for a reason other than because the worker was not fit for employment because of the injury • the employer is a non business employer, and • the employer cannot provide suitable employment.	Insurer must notify Minister prior to ceasing compensation payment for non-compliance with personal injury plan (s113 <i>Workers Compensation Act 1951</i> ). Employer should notify insurer prior to dismissing worker. Employers can be penalised for failure to provide suitable employment (s106 <i>Workers Compensation Act 1951</i> ).
<b>C'wealth Comcare</b>	Suitable employment, in relation to an employee who has suffered an injury in respect of which compensation is payable under this s4 of the SRC Act, means: a) in the case of an employee who was a permanent	Not specified.	Not specified.	The Guidelines for Rehabilitation Authorities 2012, See paragraph 15.2, note 3, states: that where an employee unreasonably fails or refuses to undertake a rehabilitation program, the employer is not obliged to provide for or	No requirements.

What constitutes suitable duties	Any time limits on the provision of suitable employment?	Does the employer have an obligation to hold the injured worker's former position open? For how long?	Exemptions	Requirement for the employer to notify the authority before dismissing the injured worker?	
<p>employee of the Commonwealth or a licensee on the day on which he or she was injured and who continues to be so employed — employment by the Commonwealth or the licensed corporation, as the case may be in work for which the employee is suited having regard to:</p> <ul style="list-style-type: none"> <li>(i) the employee's age, experience, training, language and other skills</li> <li>(ii) the employee's suitability for rehabilitation or vocational retraining</li> <li>(iii) where employment is available in a place that would require the employee to change his or her place of residence — whether it is reasonable to expect the employee to change his or her place of residence, and</li> <li>(iv) any other relevant matter.</li> </ul> <p>(b) in any other case — any employment (including self employment), having regard to the matters specified in subparagraphs (a)(i), (ii), (iii) and (iv). The employer is advised under s40, to provide the employee with, or to assist the employee to obtain suitable employment.</p>			assist with suitable employment.		
<b>C'wealth Seacare</b>	Any employment (including self-employment) for which the employee is suited having regard to: (a) employee's age, experience, training, language and other skills (b) employee's suitability for rehabilitation or vocational retraining (c) if the employment is available in a place that would require the employee to change his or her place of residence-whether it is reasonable to expect the employee to change his or her place of residence; and (d) any other relevant matters.	Not specified.	Not specified.	No	No
<b>C'wealth DVA</b>	Work for which the person is suited having regard to the following: (a) the person's age, experience, training, language and other skills, (b) the person's suitability for rehabilitation or vocational retraining, (c) if work is available in a place that would require the person to change his or her place of residence — whether it is reasonable to expect the person to change his or her place of residence, and (d) any other relevant matter.	No	No	No	No
<b>New Zealand</b>	Providing the injured employee with a working environment in which they can perform duties that will not further injure or prohibit recovery of the original injury.	Must be in agreement with the employee, work as a partnership toward full return to work.	No requirement for employers to keep a position open for an injured worker.	—	



Table 5.2d: Other requirements of employers

Other requirements of employers	
<b>New South Wales</b>	Obligation to participate in establishment of injury management plan s46 1998 Act. Employer to provide suitable work s49 1998 Act. Category 1 employer must have return to work coordinator CI 23 Reg 2010. The employer of an injured worker must notify the insurer or the Authority within 48 hours after becoming aware that a worker has received a workplace injury in the manner prescribed by the regulations. Chapter 3 s44, 1998 Act. Register of injuries — The employer must maintain a register of injuries in which workers record details of work-related injuries, (Clause 45 of the Workers Compensation Regulation 2010). Record of wages — The employer must keep a record of wages for at least the previous 5 years (s174 of the <i>Workers Compensation Act 1987</i> ).
<b>Victoria</b>	s196 — Consult about the return to work of a worker. s197 — Nominate a Return to Work Coordinator — must have sufficient seniority and be competent to perform the role. s199 — Host to cooperate with labour hire employer. s207 — Resolution of return to work issues.
<b>Queensland</b>	Employers must appoint a Rehabilitation and Return to Work Coordinator if they meet the same wages threshold that applies for having a workplace rehabilitation policy and procedures. The Rehabilitation and Return to Work Coordinator must also be located in Queensland (Act s226).
<b>Western Australia</b>	No
<b>South Australia</b>	s28D — Requires an employer to appoint a Rehabilitation and Return to Work Coordinator if the employer has 30 or more employees. s28D(4) lists the functions and responsibilities of the coordinator which is further expanded in the <a href="#">WorkCover Rehabilitation and return to work coordinator training and operational guidelines</a> . s28A(3) requires the Corporation to consult with the employer or Rehabilitation and Return to Work Coordinator (if appointed) when preparing a Return to Work Plan. s28A(6) states the Return to Work Plan is binding on the employer. s58A of the Act states the employer must notify the Corporation when; “(a) a worker who has been receiving weekly payments for total incapacity returns to work; or (b) there is a change in the weekly earnings of a worker who is receiving weekly payments for partial incapacity; or (c) there is a change in the type of work performed by a worker who is receiving weekly payments for partial incapacity.”
<b>Tasmania</b>	s143A — An employer must notify its insurer within 3 working days of becoming aware that one of the employer’s workers has suffered a workplace injury that results in or is likely to result in the worker being totally or partially incapacitated for work; or is required to be reported under the employer’s injury management program. s143B(3) and (4) — If the employer is a self-insurer and/or submitted its own injury management program to the Board, the employer must appoint an injury management coordinator. s143D — An employer who employs more than 50 workers must appoint a return to work coordinator and must assign workers with significant injuries to the return to work coordinator as soon as practicable. s143E(7) — An employer must take all reasonable steps to comply with the requirements of a return to work plane or injury management plan. s143P(1) — As soon as practicable after making a significant decision in relation to the injury management of a worker, the employer is to notify the worker of the decision and the reason/s for the decision.
<b>Northern Territory</b>	If unable to provide suitable duties, the employer must refer injured worker to the Alternative Employer Incentive Scheme — s75A(3).
<b>Australian Capital Territory</b>	No
<b>C’wealth Comcare</b>	36 Assessment of capability of undertaking rehabilitation program. (1) Where an employee suffers an injury resulting in an incapacity for work or an impairment, the rehabilitation authority may at any time, and shall on the written request of the employee, arrange for the assessment of the employee’s capability of undertaking a rehabilitation program.
<b>C’wealth Seacare</b>	Employers must appoint an approved rehabilitation provider — s50(1).
<b>C’wealth DVA</b>	No
<b>New Zealand</b>	—

Table 5.3: Responsibilities of workers

	Responsibilities of the worker in relation to the return to work / injury management plan	Obligations in relation to participating in medical treatment and/or rehabilitation	Obligations in relation to participating in assessment	Obligations in making efforts to return to work	Obligations in relation to notifying about a return to work	Other obligations
<b>New South Wales</b>	s47 1998 Act — Must participate and cooperate in the establishment of an injury management plan. Must comply with obligations under an injury management plan. Must nominate treating doctor. Must authorise treating doctor to provide information for the purposes of injury management.	s47 1998 Act — Must participate.	S119 1998 Act — A worker who has given notice of an injury or receiving weekly payments of compensation, must if so required by the employer, submit himself or herself for examination by a medical practitioner, provided and paid by the employer.	s48 1998 Act — Must make all reasonable efforts to return to work.	s57 1987 Act — If in receipt of weekly compensation, must notify of return to work or commencement of own business or any change in employment.	If a worker is fit for suitable duties and the employer cannot provide them the worker must: <ul style="list-style-type: none"> <li>• take reasonable steps to find suitable work with some other employer and if they find suitable work they must accept it or their workers compensation benefits will be stopped; be willing to accept work that is within their abilities and circumstances, or</li> <li>• undertake rehabilitation and/or retraining needed to improve their chances of getting suitable work.</li> </ul>
<b>Victoria</b>	Div 3 Obligations of workers. s200 — Participate in planning for return to work. s203 — Return to work. s204 — Participate in an interview.	s201 — Use occupational rehabilitation services.	s202 — Participate in assessments.	s203 — Make reasonable efforts to return to work.	s206	Failure to comply with Division 3.
<b>Queensland</b>	Act s231, s232 — The worker must participate in rehabilitation (including suitable duties programs), while they are entitled to compensation. The worker must also mitigate their loss (for the purposes of common law claims) by participating in rehabilitation, return to work program or suitable duties programs.	Act s232 — The worker must participate in rehabilitation while they are entitled to compensation. If they do not, the insurer may suspend the worker's compensation payments.	Act s135 — An insurer may require a worker to be examined by a person registered to provide medical treatment. A worker's compensation may be suspended if they fail to attend or refuse examination. Act s500 — An insurer may also refer a matter relating to an injury to a Medical Assessment Tribunal for decision. A worker must attend a Medical Assessment Tribunal if requested by the insurer, and must submit to examination by the tribunal. Act s510 — If a worker does not attend or refuses to be examined, their compensation may be suspended. An insurer must request the examination in the way specified by Reg s88.	Act s232 — A worker must satisfactorily participate in rehabilitation and a worker must mitigate their loss by participating (Act s231) in any return to work program or suitable duties.	Act s136 — A worker receiving compensation for an injury must notify the insurer within 10 business days of returning to work .	

	<b>Responsibilities of the worker in relation to the return to work / injury management plan</b>	<b>Obligations in relation to participating in medical treatment and/or rehabilitation</b>	<b>Obligations in relation to participating in assessment</b>	<b>Obligations in making efforts to return to work</b>	<b>Obligations in relation to notifying about a return to work</b>	<b>Other obligations</b>
<b>Western Australia</b>	<ul style="list-style-type: none"> <li>• s72B participate in return to work program.</li> <li>• To the best of ability carry out agreed actions as outlined in the return to work program.</li> <li>• Immediately inform Injury Management Coordinator and manager of any difficulties carrying out the return to work program.</li> </ul>	<p>WorkCover WA guidance notes that workers should:</p> <ul style="list-style-type: none"> <li>• s64 and 65 Attend medical examinations</li> <li>• provide medical certificates in timely fashion</li> <li>• attend medical and other treatment appointments arranged by treating doctor, or arranged by the employer</li> <li>• if referred to a workplace rehabilitation service, participate in all aspects of the service and work cooperatively with the service provider , and</li> <li>• advise of any changes to treating doctor or other treatment providers.</li> </ul> <p><a href="#">WorkCover WA guidance: Obligations of the key parties.</a></p>			<ul style="list-style-type: none"> <li>• s59 notify employer within 7 days if returning to employment .</li> </ul>	<ul style="list-style-type: none"> <li>• Communicate with parties in open and honest manner and reply to reasonable levels of communication.</li> <li>• Advise of any changes in contact details.</li> </ul>
<b>South Australia</b>	<p>s28A(4) — The Return to Work Plan may impose obligations on worker.</p> <p>s28A(6) — the Return to Work Plan is binding on worker.</p> <p>s36(1)(f) — A worker's income maintenance can be discontinued if the worker 'breaches mutuality'.</p> <p>s36(1a)(e) — This includes if a worker fails to comply with an obligation under the Rehabilitation and Return to Work Plan.</p>	<p>s36(1a)(a) — Worker's income maintenance can be discontinued if worker fails to submit to an examination by a recognised medical expert nominated by the Corporation, and s36(1a)(c) refuses or fails to submit to proper medical treatment for the worker's condition. s36(1b) states a worker has not breached mutuality if they reasonably refuse surgery or the administration of a drug or if they chooses one form of treatment over another.</p>	<p>s36(1a)(a) — Worker may be discontinued if they fail to submit to an examination organised by the Corporation with a recognised medical expert nominated by the Corporation. s36(1)(f) — that weekly payments may be discontinued if the worker breaches the obligation of mutuality and 36(1)(fa) — states a worker has breached the obligation of mutuality if the worker fails to participate in assessments of the worker's capacity, rehabilitation progress or future employment prospects (including by failing to attend).</p>	<p>s36(1a)(e) — Worker may be discontinued if they fail to comply with an obligation under the Rehabilitation and Return to Work Plan s36(1a)(f) — worker may be discontinued if they refuse to undertake work that has been offered that the worker is capable of performing or if they fail to take reasonable steps to find or obtain suitable employment.</p>	<p>Not defined in the Act.</p>	<p>s51 — Upon injury the worker must give notice to the employer within 24 hours after the disability occurred or as soon as practicable. (s41) — If the worker will be absent from Australia in excess of 28 days must notify the Corporation the prescribed details of the proposed absence at least 28 days before leaving.</p>
<b>Tasmania</b>	<p>s143G(1) — Worker to notify employer as soon as practicable after a workplace injury of the primary treating medical practitioner.</p> <p>s143E(7) and s143N(1) — Worker is to take all reasonable steps to comply with requirements of the return to work plan or injury management plan and to perform any actions that the worker is required to perform under the plan.</p>	<p>s143E(7) — Worker to take all reasonable steps to comply with requirements of the return to work or injury management plan. (s90A(7)) — If a medical practitioner conducting an independent medical review reports that any medical or surgical treatment will terminate or shorten the period of incapacity, the worker must submit to treatment. s90C — If worker fails to submit to treatment (with the exception of surgical treatment) the worker's right to compensation and to take any proceedings under the <i>Workers Rehabilitation and Compensation Act 1988</i> can be suspended.</p>	<p>s90A and s90C — In relation to medical reviews, a worker is to submit to an independent medical review at a reasonable time provided the worker has been given reasonable notice. If the worker objects to the review, he/she can refer it to the Tribunal for consideration.</p>	<p>s143N(3) — If worker is unable to perform an action, they are to seek medical advice and if appropriate undergo treatment that may enable the action, and advise the employer and injury management coordinator of the worker's inability and of any medical advice or treatment sought or undergone. A worker who is assigned reduced hours (s143N(4) in accordance with plan must take all reasonable steps to ensure attending a medical practitioner does not interfere with worker's employment during those hours.</p>	<p>N/A</p>	<p>s143J — A worker must not wilfully fail to disclose to any treating medical practitioner any information that the worker knows or ought reasonably be expected to know is relevant to the diagnosis or treatment of the worker's workplace injury.</p>

	<b>Responsibilities of the worker in relation to the return to work / injury management plan</b>	<b>Obligations in relation to participating in medical treatment and/or rehabilitation</b>	<b>Obligations in relation to participating in assessment</b>	<b>Obligations in making efforts to return to work</b>	<b>Obligations in relation to notifying about a return to work</b>	<b>Other obligations</b>
<b>Northern Territory</b>	s75B — Return to Work/Injury Management plan not regulated but worker must cooperate with reasonable return to work process.	s75B — Worker must cooperate with reasonable medical, surgical and rehabilitation treatment and participate in rehabilitation training or a workplace based return to work program.	s75B — Must present at reasonable intervals for assessment of employment prospects.	No obligation for worker to be proactive — obligation is on employer to provide or arrange. Worker must then cooperate.	s90 — Worker must notify employer if returns to work with another employer or circumstances change in a way likely to affect entitlement.	N/A
<b>Australian Capital Territory</b>	s113 — The worker must: <ul style="list-style-type: none"> <li>• s101 — Participate in development of personal injury plan</li> <li>• s102 — Nominate treating doctor, and</li> <li>• s113 — Participate in vocational rehabilitation or a return to work program.</li> </ul>	s101(2) — The injured worker must comply with reasonable obligations under the plan, including any obligation to receive medical treatment or rehabilitation services.	s113 — Attend assessments of the worker's employment prospects. s113 — Attend a medical assessment of the worker's injury.	s104 — An injured worker must make all reasonable efforts to return to work with the workers pre-incapacity employer. s113 — Undertake suitable alternative duties provided. s113 — Take up an offer of suitable work for which worker is qualified and worker can perform.	No	No
<b>C'wealth Comcare</b>	Participate actively in any Return to Work program developed by case manager. Undertake any professionally recommended and agreed changes to work practices, workplace environment and/or home environment in consultation with employer to minimise the chance of further injuries or accidents (refer to Return to Work Plan form).	s37(7) — Provides an employee obligation to participate in a rehabilitation program which may involve medical treatment. An employee's failure to participate carries a 'reaonsableness' test.	Employee shall cooperate in the assessment of the capacity to undertake a rehabilitation program: <ul style="list-style-type: none"> <li>• S36(3) — Employee shall undergo a required examination.</li> <li>• employee should cooperate and actively participate with case manager and/or rehabilitation provider in development of rehabilitation program.</li> <li>• s36(4) — All rights and proceedings under the act are suspended if an employee fails, without reasonable excuse, to undergo a rehabilitation examination.</li> </ul>	s19(4) — Employee has a responsibility to actively seek or participate in suitable employment where that employee has a capacity to return to work.	No legislative requirements.	Rehabilitation Guidelines <ul style="list-style-type: none"> <li>• find out about agency's rehabilitation policy</li> <li>• inform supervisor or case manager know if going to be away from work for an extended period due to a work related injury</li> <li>• talk to case manager about obligations and rights regarding rehabilitation</li> <li>• may need to undergo an assessment for rehabilitation</li> <li>• actively participate in the return to work program, and</li> <li>• talk to case manager or rehabilitation provider if there are any concerns about the return to work plan.</li> </ul>
<b>C'wealth Seacare</b>			s49(3) — The employer may require the employee to undergo an examination in relation to an assessment. s49(4) — If the employee does not attend, without reasonable excuse, or obstructs the examination, compensation can be suspended.	s50(5) — If the employee, without reasonable excuse, does not undertake a rehabilitation program provided for them, compensation can be suspended.		

	<b>Responsibilities of the worker in relation to the return to work / injury management plan</b>	<b>Obligations in relation to participating in medical treatment and/or rehabilitation</b>	<b>Obligations in relation to participating in assessment</b>	<b>Obligations in making efforts to return to work</b>	<b>Obligations in relation to notifying about a return to work</b>	<b>Other obligations</b>
<b>C'wealth DVA</b>	s52 — If rehabilitation authority requires person to undertake a rehabilitation program and person refuses or fails to undertake the program, authority may determine that the person's right to compensation (but not the person's right to treatment or compensation for treatment) is suspended until person undertakes the rehabilitation program.	As adjacent.	s50 — If the rehabilitation authority requires the person to undergo an examination and the person: (a) refuses or fails to undergo the examination; or (b) in any way obstructs the examination; the authority may determine that the person's right to compensation (but not the person's right to treatment or compensation for treatment) is suspended until the examination takes place.	As adjacent.	N/A	N/A
<b>New Zealand</b>	Yes — s72.	Yes — s72.	No	No		A Claimant who receives any entitlement must, when reasonably required to do so by the Corporation: authorise the Corporation to obtain medical and other records that are or may be relevant to the claim.

Table 5.4: Injured worker placement incentives

Name of scheme	Includes wage/salary subsidy?	Premium exemption	Second injury costs from aggravation or recurrence of existing injury	Funding for equipment used for workplace modifications	Training costs	Work trials	Further information
<b>New South Wales</b>	JobCover Placement Program.	Yes — up to \$27 000 over a 52 week period can be paid as an incentive payment to the employer.	Yes — injured workers wages not included in wages for premium calculation purposes for 2 years.	Yes — changes to the existing injury are managed against the original claim for a period of 2 years.	Yes — no limit to amount — justify against the principles for funding of equipment and workplace modification.	Yes — no limit to amount — justify against the principles of retraining.	Yes — work experience with a host employer for up to 12 weeks. <a href="#">JobCover placement program guidelines.</a> <a href="#">Work trial guidelines.</a> <a href="#">Retraining, equipment and workplace modification guidelines.</a>
<b>Victoria</b>	WISE	WISE is a 12 month financial incentive of up to \$26 000 payable to employers who offer ongoing employment of 15 hours + to workers with an accepted WorkSafe claim who cannot return to work with their pre-injury employer.	Employers are offered WorkSafe Injury Insurance protection if the worker ceases work because of a new injury. Additionally, the cost of that claim is excluded from the employer's injury insurance premium calculation, though the employer is still liable to pay an excess of the first 10 days' of weekly payments and indexed medical expenses.	If a worker on a WISE placement has a further injury during their placement, the WISE employer's WorkSafe Agent will determine whether this is a new injury or part of the original claim. Where the decision is that the injury is a continuation of the original injury, then any weekly payments, medical and like expenses will be paid against the original employer's policy.	Not part of WISE but may be provided to the worker as an occupational rehabilitation service based on the claim circumstances.	Not part of WISE but may be provided to the worker as an occupational rehabilitation service based on the claim circumstances.	No <a href="#">WISE Brochure — Employers.</a> <a href="#">WISE Brochure — Workers.</a>
<b>Queensland</b>	Host Placement, run by WorkCover Queensland.	WorkCover continues to pay the workers' compensation entitlements while they participate in the program.	Nil	Any injuries sustained during the host program are covered by WorkCover Queensland and do not affect the host employer's premium. At the end of the program, any aggravation to existing injury is covered by WorkCover Queensland for 6 months following the commencement of employment.	Is considered on a case by case basis. Reasonable costs will be paid by WorkCover.	WorkCover will pay for training/additional skills required to secure employment with the host employer.	The work trial will run for 6 to 8 weeks. <a href="#">Host Placement.</a>
<b>Western Australia</b>	N/A						
<b>South Australia</b>	RISE (re-employment incentive scheme for employers).	Reimbursement of 40% of gross wages for up to 52 weeks of employment.	No	If the worker aggravates their existing pre-existing injury and it has been medically established that it is an aggravation, the cost of the claim will not be recorded against the RISE employer.	Cost associated with minor site modifications, equipment.	This is considered under a return to work plan to meet the return to work objectives and suitable employment goal.	As adjacent for training cost. RISE information sheets — <a href="#">RISE information for workers</a> and <a href="#">RISE information for employers.</a>
<b>Tasmania</b>	N/A						

	Name of scheme	Includes wage/salary subsidy?	Premium exemption	Second injury costs from aggravation or recurrence of existing injury	Funding for equipment used for workplace modifications	Training costs	Work trials	Further information
<b>Northern Territory</b>	Alternative Employer Incentive Scheme — s75A.	Yes	N/A	12 months.	Yes reasonable and necessary costs — s76.	Yes reasonable and necessary costs — s76.	Alternative Employer Incentive Scheme provides for 12 week work trial.	<a href="#">Alternative Employer Incentive Scheme.</a>
<b>Australian Capital Territory</b>	Second Injury Scheme (s108 — <i>Workers Compensation Act 1951</i> ). The scheme provides for private arrangements between insurers and employers.	The legislation provides for a wage subsidy and indemnity from injuries. Commercial arrangements can be made between insurers and employers.	Yes	Yes — private arrangement between insurers and employers.	Not expressly provided for but can be negotiated between insurers and employers.	Not expressly provided for but can be negotiated between insurers and employers.	Not expressly provided for but can be negotiated between insurers and employers.	No guidance material has been published.
<b>C'wealth Comcare</b>	The Comcare Scheme.	No legislative requirements.	No legislative requirements.	Yes	Yes	Yes	Yes	<a href="#">Comcare</a>
<b>C'wealth Seacare</b>	N/A							
<b>C'wealth DVA</b>	Vocational Rehabilitation Employer Incentives.	Yes	No	Yes	Yes	Yes	Yes	<a href="#">Rehabilitation Manual Chapter 9.8</a> .
<b>New Zealand</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Table 5.5: Responsibilities of authority/ insurer

Responsibilities of authority/ insurer	
<b>New South Wales</b>	The insurer must within three working days of being notified that a worker has sustained a significant injury, contact the employer, worker and (if necessary) the nominated treating doctor. Subsequently, the insurer must develop an injury management plan in line with timeframes in the insurer's injury management program. Consult with the injured worker, employer and nominated treating doctor in the development of an injury management plan. Provide the injured worker, employer and nominated treating doctor with information on the injury management plan initially and as the plan progresses. Consult with the injured worker, employer and nominated treating doctor when referring to a workplace rehabilitation provider. Ensure vocational retraining and/or assistance to obtain employment with a new employer is arranged for an injured worker as soon as it is identified that a return to pre-injury duties and provision of suitable duties is no longer possible.
<b>Victoria</b>	Agents do not have return to work obligations under the Act, while employers and workers do. While Agents can assist employers and workers to meet their return to work obligations, such as return to work planning, they cannot meet these obligations on the organisation's or individual's behalf. For instance, in relation to meeting s195 (providing the worker with clear and accurate details of the return to work arrangements) Agents can assist employers in developing arrangements. This could in some instances involve assistance in the writing of return to work arrangements provided the employer has ownership of the arrangements. Ownership includes the employer agreeing with and understanding the details of the return to work arrangements and ensuring that the worker and other people such as the worker's supervisor are aware of the arrangements.
<b>Queensland</b>	Act s22 — Insurers are responsible for securing an injured worker's rehabilitation and early return to suitable duties. An insurer is also responsible for coordinating the development and maintenance of a rehabilitation and return to work in consultation with the injured worker, the employer and treating registered persons. s221 — Authorities responsibility for rehabilitation — (1) The Authority must: (a) provide rehabilitation and return to work advisory services for workers, employers and insurers; and (b) ensure employers and insurers comply with their rehabilitation requirements under the Act. (2) If the worker consents, the Authority must refer a worker for whom a notice has been given under s220 (4) (i.e. workers who are unable to return to work when the payment of weekly compensation stops) to programs that may help return the worker to work.
<b>Western Australia</b>	<b>Insurers' Responsibilities</b> s155D — Injury management: insurers' obligations: <ul style="list-style-type: none"> <li>• To make employers aware of their obligations in relation to return to work programs and injury management systems.</li> <li>• If requested by the employer either: <ol style="list-style-type: none"> <li>1. assist the employer comply with their obligations in relation to return to work programs and injury management systems, or</li> <li>2. discharge the employer's obligations on behalf of the employer.</li> </ol> </li> </ul> <b>WorkCover WA Responsibilities</b> s157 — To provide Information about injury management matters WorkCover WA is to: <ul style="list-style-type: none"> <li>• provide information and advice on injury management generally</li> <li>• make available, upon request, to employers, workers and other persons such information or other assistance as it considers appropriate to facilitate the arranging of injury management</li> <li>• make arrangements with other persons or authorities for the use of facilities for providing information about injury management and related matters, and</li> <li>• provide information on injury management or related matters to an arbitrator.</li> </ul>
<b>South Australia</b>	WorkCovers' appointed claims agents are to — (i) manage and determine claims under the <i>Workers Rehabilitation and Compensation Act 1986</i> ; and (ii) implement or manage programs to assist or encourage workers who have suffered compensable injuries or disabilities to return to work, as agent for the Corporation, with the scope of these functions to be specified in the contract (refer to <i>WorkCover Corporation (Claims Management — Contractual Arrangements) Regulations 2012</i> under the <i>WorkCover Corporation Act 1994</i> ).
<b>Tasmania</b>	s142 — An insurer must ensure that there is an injury management program in place in respect of each of its employers (note — the insurer can submit an injury management program to the Board for approval that applies to a group of employers or to all of its employers), must comply with each injury management program and must review any programs it has submitted to the Board every 12 months. s143B(1) — An insurer must appoint an injury management coordinator in respect of its employers. s143B(2) — As soon as practicable after becoming aware that a worker (employed by one of its employers) has suffered a significant injury, the insurer must assign that worker to the injury management coordinator. s143P(1) — As soon as practicable after making a significant decision in relation to the injury management of a worker, the insurer is to notify the worker of the decision and the reason/s for the decision.
<b>Northern Territory</b>	s75A provides for responsibilities on employers and the return to work process. As the insurer has full rights of subrogation over the management of the claim, the



Responsibilities of authority/ insurer	
	responsibilities on the employer apply equally to the insurer.
<b>Australian Capital Territory</b>	Chapter 8 of the <i>Workers Compensation Act 1951</i> — insurer obligations. Chapter 5 — injury management obligations. s88 establish and review injury management program — reviewed every 2 years.
<b>C'wealth Comcare</b>	s41 — Rehabilitation authorities (employer) to comply with guidelines.
<b>C'wealth Seacare</b>	
<b>C'wealth DVA</b>	See Rehabilitation Authority in Table 5.2(b).
<b>New Zealand</b>	N/A

## Functions and training of workplace rehabilitation coordinators

Some jurisdictions require employers of a certain size to employ an officer in an organisation on a full-time or ad hoc basis to coordinate the return to work of injured workers. Jurisdictions that are not required by their Act to recruit a workplace rehabilitation coordinator are Western Australia, Northern Territory, Australian Capital Territory and New Zealand.

Workplace rehabilitation coordinators have similar functions in the jurisdictions that require their employment. These functions include:

- developing a return to work plan in consultation with the injured worker and the employer
- assisting with the planning and implementation of a return to work program
- identifying suitable duties for the injured worker to enable return to work as soon as possible
- managing the return to work process by liaising with treating doctors, rehabilitation providers and the employer, and
- monitoring the injured workers' progress towards successful return to work.

Jurisdictions that require the employment of a workplace rehabilitation coordinator can have specific training requirements. Most commonly, a short course is undertaken in order to gain a qualification as a workplace rehabilitation coordinator.

Normally self-insurers case-manage their own employees, however some jurisdictions allow them to outsource this function. Table 6.7 shows the outsourcing of case management arrangements Australia.

Table 5.6: Functions and training of workplace rehabilitation coordinators

	Workplace rehabilitation coordinator requirements and threshold	Training and accreditation
<p><b>New South Wales</b></p>	<p><b>Clause 23 Workers Compensation Regulation 2010</b></p> <p>Category 1 employers (see Appendix) must have return to work coordinator</p> <p>(1) A category 1 employer must: (a) employ a person to be a Return to Work Coordinator for injured workers of the employer, being a person who has undergone such training as the guidelines may require, or (b) engage a person in accordance with such arrangements as the guidelines may from time to time permit to be a return to work coordinator for injured workers of the employer. Maximum penalty: 20 penalty units.</p> <p>(2) The following are examples of the arrangements that the <a href="#">guidelines</a> can permit for the purposes of this clause: (a) the engagement of a person under an arrangement with a person or organisation that provides Return to Work Coordinators to employers, (b) an arrangement under which a person is engaged on a shared basis by 2 or more employers.</p> <p>(3) The guidelines can require an employer to obtain the approval of the Authority before entering into an arrangement for the purposes of subclause (1) (b).</p> <p>(4) The guidelines can impose requirements with respect to the training, qualifications and experience of persons who may be engaged to be Return to Work Coordinators under subclause (1) (b).</p> <p><b>Clause 24 Workers Compensation Regulation 2010</b></p> <p>Functions of Return to Work Coordinators</p> <p>An employer's Return to Work Coordinators has such functions as may be specified in the Guidelines.</p> <p>Responsibilities:</p> <p>The responsibilities of return to work coordinators are outlined in WorkCover's Guidelines for workplace return to work programs. When Category 1 employers engage a return to work coordinator under shared arrangements, or under another type of work arrangement — eg. engaged a Return to Work Coordinator through a labour hire company — it is essential that:</p> <ul style="list-style-type: none"> <li>• the employers have a common interest</li> <li>• the shared or outsourced arrangements provide improvements in the return to work services</li> <li>• workers are not disadvantaged</li> <li>• the return to work coordinator has appropriate qualifications and experience</li> <li>• WorkCover approval is obtained, and</li> <li>• the return to work program is reviewed every two years.</li> </ul> <p>There is no requirement for Category 2 employers to appoint a Return to Work Coordinator, however, employer associations and unions may establish shared return to work coordinator positions to assist smaller employers to fulfil their obligations.</p>	<p><a href="#">Guidelines for workplace Return to Work Programs</a></p> <p>The Return to Work Coordinator must hold:</p> <ul style="list-style-type: none"> <li>• certificate certifying attendance at the WorkCover two-day course <i>Introduction to return to work coordination</i>, or</li> <li>• certificate certifying attendance at a two-day WorkCover training course for rehabilitation coordinators conducted prior to February 1995, or</li> <li>• letter from Provider Services Branch agreeing to exempt the return to work coordinator from participating in above training.</li> </ul> <p><b>Introduction to Return to Work Coordination</b> is a two-day WorkCover approved course for people planning to work as a return to work coordinator in NSW.</p> <p>Applications for exemption from training can be accessed on the WorkCover website.</p> <p><b>Advanced return to work coordination</b></p> <p>Advanced return to work coordination is a one-day course for experienced return to work coordinators. This is an interactive course with a focus on strategic case management and managing complex cases.</p> <p><b>Trainers</b></p> <p>Trainers of return to work coordination courses can be searched for on the WorkCover website by name and region. This facility specifies whether a trainer is registered to deliver both levels of training or just the introductory course. For information about availability of trainer services in a particular region, please contact the trainer direct.</p> <p><b>Shared or engaged return to work coordinators</b></p> <p>Shared/engaged return to work coordinators must have significant experience in workplace-based workplace rehabilitation, preferably as a Return to Work Coordinator. It is also preferable that a shared Return to Work Coordinator has tertiary qualifications.</p> <p>The shared/engaged return to work coordinator must have the skills and fulfil all the duties of a Return to Work Coordinator as outlined in these guidelines, and have completed the WorkCover approved two-day course.</p> <p><b>Training</b></p> <p>Applications for registration as an approved trainer can be made to WorkCover's Workers Compensation Insurance Division.</p> <p>Approved trainers are listed on the WorkCover website <a href="http://www.workcover.nsw.gov.au/forms/Pages/ReturnToWorkCoordinatorSearch.aspx">http://www.workcover.nsw.gov.au/forms/Pages/ReturnToWorkCoordinatorSearch.aspx</a>.</p>
<p><b>Victoria</b></p>	<p>An employer's obligation to have a Return to Work Coordinator depends on their rateable remuneration:</p> <ul style="list-style-type: none"> <li>• an employer with a rateable remuneration of \$2 million or more* (indexed per annum, \$2 125 000 as at 30/09/12) must have a nominated Return to Work Coordinator appointed at all times, and</li> <li>• an employer with a rateable remuneration of less than \$2 million* must nominate and appoint a Return to Work Coordinator for the duration of the employer's return to work obligations to an injured worker.</li> </ul>	<p><b>Return to Work Coordinator Training</b></p> <p>Completion of Return to Work Coordinator training is not mandated by WorkSafe. However, WorkSafe strongly encourages Return to Work Coordinators to complete the WorkSafe endorsed 2 day Return to Work Coordinator training course developed by WorkSafe in consultation with external stakeholders. Further information can be obtained at <a href="#">Return to Work Coordinator training calendar</a></p> <p><b>Applying to become a provider of Return to Work Coordinator training</b></p> <p>To become a provider of WorkSafe's endorsed Return to Work Coordinator training</p>

Workplace rehabilitation coordinator requirements and threshold		Training and accreditation
	<p>The <i>Accident Compensation Act 1985</i> (the Act) requires that an employer must nominate and appoint a person to be a Return to Work Coordinator who has an appropriate level of seniority and is competent to assist the employer to meet the employer's obligations under Part VIIIB of the <i>Accident Compensation Act 1985</i>.</p> <p>A person is competent to assist the employer to meet its obligations under Part VIIIB of the Act if the person has knowledge, skills or experience relevant to planning for return, including: (a) knowledge of the obligations of employers and workers under Part VIIIB of the <i>Accident Compensation Act 1985</i> (b) knowledge of the compensation scheme provided for under the <i>Accident Compensation Act 1985</i> and the functions of WorkSafe and, if relevant, self-insurers under Part VIIIB of the <i>Accident Compensation Act 1985</i>.</p> <p>View WorkSafe's <a href="#">Return to Work Coordinator fact sheet</a> and the publication <a href="#">Return to Work Coordination — The basics you need to know</a> for more detailed information.</p>	<p>interested parties must complete a <a href="#">Provider Application for Approval to Conduct Role of a Return to Work Coordinator Training Program</a> application form and satisfy the necessary requirements to gain approval.</p> <p><b>Return to Work Coordinator Network</b></p> <p>Return to Work Coordinators registration on the <a href="#">Return to Work Coordinator Network</a> is not mandated by WorkSafe. However, WorkSafe strongly encourages all Return to Work Coordinators to register on the Return to Work Coordinator Network in order to stay up to date with the latest return to work news, information and events, and in doing so build upon and maintain their competence as a coordinator.</p>
Queensland	<p><b>s41 — Meaning of Rehabilitation and Return to Work Coordinator</b></p> <p>A Rehabilitation and Return to Work Coordinator is a person who: (a) has met the criteria for becoming a Rehabilitation and Return to Work Coordinator prescribed under a regulation, and (b) has the functions prescribed under a regulation.</p> <p><b>s226 — Employer's obligation to appoint rehabilitation and Return to Work Coordinators (see also 266(1) for high risk industries, high earners)</b></p> <p>(1) An employer must appoint a Rehabilitation and Return to Work Coordinator if the employer meets criteria prescribed under a regulation.</p> <p>(2) The Rehabilitation and Return to Work Coordinator must be in Queensland and be employed by the employer under a contract (regardless of whether the contract is a contract of service).</p> <p>(3) The employer must appoint the Rehabilitation and Return to Work Coordinator within 6 months after workplace is established or workers are employed at a workplace. Later period can be granted. Maximum penalty — 50 penalty units.</p> <p>(5) A Rehabilitation and Return to Work Coordinator is not civilly liable for an act done, or an omission made, in giving effect to the workplace rehabilitation policy and procedures of an employer.</p> <p>(6) If ss(5) prevents a civil liability attaching to a rehabilitation and return to work, the liability attaches to the employer. The functions of a Rehabilitation and Return to Work Coordinator are outlined at:</p> <p><b>r99B Functions of Rehabilitation and Return to Work Coordinator — Act, s41(b).</b></p>	<p><b>r99A — Criteria for becoming Rehabilitation and Return to Work Coordinator — Act, s41(a)</b></p> <p>A person meets the criteria for becoming a Rehabilitation and Return to Work Coordinator by satisfactorily completing a workplace rehabilitation course approved or conducted by the Authority.</p>
Western Australia	N/A	N/A
South Australia	<p><b>WRC Regulations 2010, Regulation 26 — Rehabilitation and Return to Work Coordinator — exemptions from requirements (s28D of Act)</b></p> <p>(1) Subject to sub regulation (2), an employer is exempt from the requirement to appoint a coordinator under s28D of the Act:</p> <p>a) in respect of a particular financial year if</p> <p>(i) the employer, as at the relevant time, employs fewer than 30 workers; or</p> <p>(ii) holds an exemption from the Corporation under this paragraph granted on the ground that the Corporation is satisfied —</p> <p>(A) that the employer reasonably expects not to employ 30 or more workers during the financial year for any continuous period of 3 (or more) months, and</p> <p>(B) that in the particular circumstances it is appropriate to grant the exemption, or</p>	<p>The newly appointed Coordinators of small employers who have 30 or more workers will be required to attend a one-day face-to-face workshop. Small employers are those who pay less than \$20 000 base premium to WorkCover and/or pay less than \$300,000 in annual remuneration to their workers.</p> <p>The newly appointed Coordinators of medium, large, retro-paid loss and self-insured employers who have 30 or more workers will be required to attend a two-day face to face workshop. Assessments are undertaken to ensure eligibility as a Coordinator.</p> <p><b>See recent developments section within this report for further information.</b></p>

Workplace rehabilitation coordinator requirements and threshold		Training and accreditation
	<p>b) in respect of part of a particular financial year if</p> <ul style="list-style-type: none"> <li>(i) the employer employs fewer than 30 workers at any time, and</li> <li>(ii) the employer obtains an exemption from the Corporation.</li> </ul> <p>Regulation 26 of WRC Regulations 2010 in force from 1 November 2010 preceded by identical Regulation 3C of the WRC (General) Regulations 1999.</p> <p>Booklet: <a href="#">All you need to know about rehabilitation and return to work coordinators.</a></p>	
Tasmania	<p><b>Injury Management Coordinator — s143B. Injury management coordinator to be appointed</b></p> <p>(1) The licensed insurer of an employer of a worker must appoint an injury management coordinator in respect of the employer.</p> <p>(2) The licensed insurer of an employer of a worker, as soon as practicable after becoming aware that the worker has suffered a significant injury, must assign the worker to the injury management coordinator in respect of the employer.</p> <p>(3) If a worker's approved injury management program was submitted by the worker's employer to the employer's insurer under s143(4): (a) subsections (1) and (2) do not apply to the employer's insurer; and (b) the employer must (i) appoint an injury management coordinator in respect of the employer; and (ii) assign a worker to the injury management coordinator, as soon as practicable after becoming aware the worker has suffered an injury.</p> <p>(4) If a worker's approved injury management program was submitted by the worker's employer to the Board under s143(5) or (6) — see Section.</p> <p><b>Return to Work coordinator — s143D Return to Work Coordinator may be required to be appointed</b></p> <p>(1) An employer who employs more than 50 workers must appoint a Rehabilitation and Return to Work Coordinator. Penalty: Fine not exceeding 50 penalty units.</p> <p>(2) A person may only be appointed under ss(1) to be a Rehabilitation and Return to Work Coordinator if (see training and accreditation).</p> <p>(3) A worker's employer who employs more than 50 workers, as soon as practicable after becoming aware that a worker has suffered a significant injury, must assign the worker to the Rehabilitation and Return to Work Coordinator appointed under <a href="#">ss(1)</a> in respect of the employer. Penalty: Fine not exceeding 50 penalty units.</p> <p>(4) A worker's employer may only assign a worker to a Rehabilitation and Return to Work Coordinator if the coordinator is familiar with the workplace, and the management and staff of the workplace, in which the worker is employed.</p>	<p><b>Injury Management Coordinator — s143B(5)</b></p> <p>A person may only be appointed to be an injury management coordinator if, where the Board approves a course of training: (a) the person has successfully completed the course of training; or (b) the Board is satisfied that the person has obtained a qualification or completed a course of training that is at least equivalent to the course of training approved by the Board.</p> <p><b>WorkCover Tasmania Guideline for Injury Management Coordinator Training Requirements</b></p> <p>An IMC is required to complete the following nine units of competency (recognised within the Australian Qualifications Framework) identified by WorkCover. These units focus on the skills required to fulfil the functions of an IMC. The identified units of competency are sourced primarily from the Financial Services Training Package at both diploma level and certificate IV level. The units are also inclusive of the units of competency recommended for Rehabilitation and Return to Work Coordinators.</p> <p><a href="#">Guideline for Injury Management Coordinator Training Requirements (IMC—010)</a></p> <p><b>Return to Work Coordinator — s143D(2)</b></p> <p>A person may only be appointed under ss(1) to be a Rehabilitation and Return to Work Coordinator if, where the Board has approved a course of training: (a) the person has successfully completed the course of training; or (b) the Board is satisfied that the person has obtained a qualification or completed a course of training that is at least equivalent to the course of training approved by the Board.</p> <p>While the WorkCover Tasmania Board has not approved a course of training Rehabilitation and Return to Work Coordinators, it is recognised that this role requires certain knowledge and skills to enable the appointed person to effectively perform the role. For this reason, it is highly recommended that a Rehabilitation and Return to Work Coordinator completes the three units of competencies recognised within the Australian Qualifications Framework:</p> <p><a href="#">The Role of the Return to Work Coordinator</a></p>
C'wealth Comcare	<p><b>Guidelines for Rehabilitation Authorities 2012</b></p> <p>Chapter 4 — Case Manager's Role:</p> <p>16.1 — A case manager shall ensure that they hold a current delegation from the relevant rehabilitation authority to perform the functions and exercise the powers of the rehabilitation authority under s36 and s37 of the Act — Para 13.a.i.</p>	<p><b>Guidelines for Rehabilitation Authorities 2012</b></p> <p>Chapter 4 — Case Manager's Role:</p> <p>16.1 — A case manager shall ensure that they hold a current delegation from the relevant rehabilitation authority to perform the functions and exercise the powers of the rehabilitation authority under s36 and s37 of the Act.</p>
C'wealth Seacare	N/A	N/A

Workplace rehabilitation coordinator requirements and threshold		Training and accreditation
<b>C'wealth DVA</b>	<p>The role of the DVA <a href="#">Rehabilitation Coordinator</a> is to facilitate and monitor the program of activities for the client involved in the rehabilitation process so as to return the person to a level of functioning, consistent with medical advice in accordance with the relevant legislation, policies and procedures which apply to that individual's circumstances. The Rehabilitation Coordinator is a link between the client, treating medical practitioners, allied health workers, service providers, training organisations and the managing agency. The Rehabilitation Coordinator is a DVA staff member, or ADF if a serving member.</p> <p><a href="#">The Australian Defence Force Rehabilitation Program (ADFRP)</a> provides rehabilitation services for Permanent Force members and Reserve Force members on continuous full-time service (CFTS), irrespective of whether a member's injury or illness is related to work.</p> <p>Reservists not on CFTS who were eligible for health care provided by Defence at the time of their injury or illness are also eligible for rehabilitation assistance. These reserve members are expected to lodge a claim for compensation with DVA as soon as possible and will remain eligible for rehabilitation under the ADFRP until a determination in respect of their claim is made. If liability is accepted the MRCC becomes the rehabilitation authority.</p>	N/A
<b>New Zealand</b>	N/A	

## **Workplace rehabilitation providers**

Workplace rehabilitation is a managed process involving timely intervention with appropriate and adequate services based on assessed need. It is also aimed at maintaining injured or ill employees in or returning them to suitable employment.

## **Responsibilities**

Workplace rehabilitation providers are engaged to provide specialised expertise in addition to what is generally available within the employer's and insurer's operations.

Depending on the jurisdiction workplace rehabilitation providers can undertake a range of services from functional and workplace assessments and advice concerning job modification to vocational retraining and assistance with job seeking. Table 5.7a provides information on the responsibilities of workplace rehabilitation providers in each jurisdiction.

## **Nationally Consistent Approval Framework for Workplace Rehabilitation Providers**

During 2006 and 2007 the Heads of Workers' Compensation Authorities (HWCA) developed a [Nationally Consistent Approval Framework for Workplace Rehabilitation Providers](#). Most jurisdictions have implemented the National Framework. Queensland does not comply with the framework for workplace rehabilitation providers. While the DVA accepts and supports the framework's principles, it has changed its focus in relation to rehabilitation to include a focus on biopsychosocial needs to ensure a holistic approach to workplace rehabilitation.

## **Qualifications and Fees Structure**

The National Framework outlines the minimum qualifications for rehabilitation providers. Some jurisdictions have additional requirements. These are outlined in Table 5.7b as is information on the fees structure in each jurisdiction.

## **Prescribed time period to establish a return to work plan**

Table 5.8 shows the 3-point contact and the return to work plan development as specified by legislation in various jurisdictions.

**Table 5.7a: Responsibilities of workplace rehabilitation provider**

Responsibilities of rehabilitation provider	
<b>New South Wales</b>	<p>Providers in the field of workplace rehabilitation have the qualifications, experience and expertise appropriate to provide services in accordance with the following definition based on NOHSC (1995) definition: Workplace rehabilitation is a managed process involving timely intervention with appropriate and adequate services based on assessed need, and which is aimed at maintaining injured or ill employees in, or returning them to, suitable employment.</p> <p>Providers are engaged to provide specialised expertise in addition to that generally available within the employer and insurer operations. Providers are engaged for those injured workers where return to work is not straight forward. Service provision is largely delivered at the workplace by:</p> <ul style="list-style-type: none"> <li>• facilitating an early return to work of the worker</li> <li>• identifying and designing suitable duties for the injured worker to assist employers to meet their obligations in providing suitable employment to injured workers</li> <li>• identifying and coordinating rehabilitation strategies that ensure workers are able to safely perform their duties</li> <li>• forging the link between the insurer, employer and treatment providers to ensure a focus on return to work, and</li> <li>• arranging appropriate retraining and placement in alternative employment when the worker is unable to return to pre-injury duties.</li> </ul>
<b>Victoria</b>	<p>s5 of the <i>Accident Compensation Act 1985</i> defines the meaning of the term occupational rehabilitation services. For injured workers, there are a number of specific return to work services known as occupational rehabilitation (OR) services to assist them return to work which can only be delivered by OR providers approved by WorkSafe Victoria. The type of OR services approved by an Agent for an injured worker depends on whether the return to work focus is to help them back to work with the injury employer (Original Employer Services — OES) or with a new employer (New employer services — NES).</p> <p>A request for OR services can be made by the worker or the worker's treating health care provider or their employer however, the WorkSafe Victoria Agent responsible for managing the injured worker's claim must approve the OR service before it is offered or provided to a worker.</p> <p>View OES provider service item codes and descriptions — <a href="#">Provide Original Employer services</a>.</p> <p>View NES provider service item codes and descriptions — <a href="#">Provide New Employer Services</a>.</p>
<b>Queensland</b>	N/A
<b>Western Australia</b>	<p>To provide vocational rehabilitation services as prescribed in regulation 44 of the Workers' Compensation and Injury Management Regulations 1982 such as:</p> <ul style="list-style-type: none"> <li>• support counselling</li> <li>• vocational counselling</li> <li>• purchase of aids and appliances</li> <li>• case management</li> <li>• retraining criteria assistance</li> <li>• specialised retraining program assistance</li> <li>• training and education</li> <li>• workplace activities</li> <li>• placement activities</li> <li>• assessments (functional capacity, vocational, ergonomic, job demands, workplace, aids and appliances)</li> <li>• travel</li> <li>• medical, and</li> <li>• general reports.</li> </ul> <p>Workplace rehabilitation providers must comply with the conditions of approval and code of conduct for workplace rehabilitation providers. These requirements are contained in:</p> <ul style="list-style-type: none"> <li>• WorkCover WA's Application for Approval as a Workplace Rehabilitation Provider <a href="#">Application for Approval as a Workplace Rehabilitation Provider Form</a>, and</li> <li>• HWCA's Guide: Nationally Consistent Approval Framework for Workplace Rehabilitation Providers. <a href="#">Guide to the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers</a>.</li> </ul>
<b>South Australia</b>	As set out in the Vocational rehabilitation service and fee specifications package — see publication, ' <a href="#">WorkCoverSA Workplace rehabilitation providers fee schedule and guidelines</a> ' dated 1 August 2011.
<b>Tasmania</b>	<p>Workplace rehabilitation providers are responsible for providing the following workplace rehabilitation services:</p> <ul style="list-style-type: none"> <li>• initial workplace rehabilitation assessment</li> <li>• assessment of a worker's functional capacity</li> <li>• workplace assessment</li> <li>• job analysis</li> <li>• advice about job modification</li> <li>• rehabilitation counselling</li> <li>• vocational assessment</li> <li>• advice or assistance with job seeking, and</li> <li>• advice or assistance arranging vocational re-education or retraining — s3 and s77A.</li> </ul>



Responsibilities of rehabilitation provider	
<b>Northern Territory</b>	<p>Vocational rehabilitation providers must be accredited by NT WorkSafe. NT WorkSafe has adopted the Nationally Consistent Approval Framework for rehabilitation providers. Vocational providers must comply with the national framework.</p> <p><a href="#">Information for Rehabilitation Providers.</a></p>
<b>Australian Capital Territory</b>	<p><a href="#">S99 WC Act 1951</a></p> <p>The insurer must appoint an approved rehabilitation provider for the injured worker as part of the personal injury plan if the worker has not returned to the worker's pre-injury duties and pre-injury working hours, within 4 weeks after the day the worker gave notice of the injury.</p> <p>Procedure for approval of rehabilitation provider:</p> <p>Providers are assessed and approved in line with the Guide — Nationally Consistent Approval Framework for Workplace Rehabilitation Providers as enforced from time to time <a href="#">Nationally Consistent Framework for Workplace Rehabilitation Providers</a>. The requirements for the role and responsibilities of providers are outlined in the above guide.</p>
<b>C'wealth Comcare</b>	<p>Providers in the field of workplace rehabilitation have the qualifications, experience and expertise appropriate to provide services in accordance with the following definition based on NOHSC (1995) definition: Workplace rehabilitation is a managed process involving timely intervention with appropriate and adequate services based on assessed need, and which is aimed at maintaining injured or ill employees in, or returning them to, suitable employment.</p> <p>Providers are engaged to provide specialised expertise in addition to that generally available within the employer and insurer operations. Providers are engaged for those injured workers where return to work is not straight forward. Service provision is largely delivered at the workplace by:</p> <ul style="list-style-type: none"> <li>• facilitating an early return to work of the worker</li> <li>• identifying and designing suitable duties for the injured worker to assist employers to meet their obligations in providing suitable employment to injured workers</li> <li>• identifying and coordinating rehabilitation strategies that ensure workers are able to safely perform their duties</li> <li>• forging the link between the insurer, employer and treatment providers to ensure a focus on return to work, and</li> <li>• arranging appropriate retraining and placement in alternative employment when the worker is unable to return to pre-injury duties.</li> </ul>
<b>C'wealth Seacare</b>	<p>s48 — states that approved rehabilitation program providers under Part 3 of the <i>Seafarers Rehabilitation and Compensation Act 1992</i> has the same meaning as in the <i>Safety, Rehabilitation and Compensation Act 1988</i>. Therefore, the responsibilities of rehabilitation providers are the same as Comcare.</p>
<b>C'wealth DVA</b>	<p>DVA Service providers are engaged by DVA to provide specific services to meet the rehabilitation needs of an individual. Rehabilitation service providers undertake a range of activities including assessment, plan development and management on behalf of DVA to optimise rehabilitation outcomes. Responsibility for the approval of these provisions recommended by the service provider are made by DVA Rehabilitation Coordinators. The Rehabilitation Coordinator has responsibility for the decision of who will provide what rehabilitation services for the client. The choice of support services will depend on the local services available and the specific needs of the client. Service providers used for a client's rehabilitation fall into four main categories:</p> <ul style="list-style-type: none"> <li>• rehabilitation service providers are responsible for the daily management and the accessing of all approved services required by the client. Rehabilitation service providers have to be approved by Comcare Australia, or by the Military Rehabilitation and Compensation Commission (MRCC) to provide such services</li> <li>• Health and Allied Health service providers are qualified and registered, general practitioners, medical specialists, dentists, psychologists, rehabilitation counsellors, occupational therapists, physiotherapists, osteopaths, podiatrists, prosthetists, orthotists, masseurs or chiropractors and dieticians</li> <li>• training providers are accredited educational institutions or training providers at state or national levels, and</li> <li>• support service providers include agencies or individuals who can provide services that assist in job preparation skilling or job placement for people seeking employment; services of a domestic nature (cooking, house cleaning, laundry and gardening services); other services, medical, nursing care, that are required for the essential and regular personal care of the client; and services which assist in altering a client's place of residence, work or training or can provide rehabilitation aids and appliances.</li> </ul>
<b>New Zealand</b>	N/A

**Table 5.7b: Rehabilitation provider qualifications and fee structure**

Minimum qualifications		Fee structure
<b>New South Wales</b>	<a href="#">Supplement to the Guide: Nationally Consistent Approval Framework for Workplace Rehabilitation Providers.</a>	There are no fee structures for workplace rehabilitation services set by WorkCover NSW.
<b>Victoria</b>	Providers must meet the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers requirements.	<a href="#">Original Employer Services.</a> <a href="#">New Employer Services.</a>
<b>Queensland</b>	There are no legislative minimum requirements for Workplace Rehabilitation Providers in Queensland. <a href="#">Q-COMP</a> outlines general standards and principles workplace rehabilitation and return to work service providers.	<a href="#">Allied Health Fees.</a>
<b>Western Australia</b>	To provide vocational rehabilitation services as prescribed in regulation 44: <a href="#">Guide to the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers.</a>	<a href="#">Fees info for Workplace Rehabilitation Providers.</a>
<b>South Australia</b>	National framework requirements and a minimum of 12 months experience delivering workplace rehabilitation services or a comprehensive induction program and a minimum of 12 months supervision program. See <a href="#">WorkCoverSA's website.</a>	<a href="#">Workplace rehabilitation provider fee schedule and guidelines (August 2011).</a>
<b>Tasmania</b>	<a href="#">Tasmanian Additional Requirements to Operate as a Workplace Rehabilitation Provider Ongoing requirements</a> (self evaluation etc).	No fee structure. Under s75(2A) — a person who provides any services in respect of a claim for compensation must not charge a fee that is in excess of (a) the prescribed fee; or (b) if no fee is prescribed, the fee the person would normally charge (taking into account any discount that would normally be applicable) for that service if that service were to be provided for a matter not connected with a claim for compensation.
<b>Northern Territory</b>	As per Nationally Consistent Approval Framework. <a href="#">NT Supplement.</a>	Not Regulated.
<b>Australian Capital Territory</b>	ACT is compliant with <a href="#">Guide to the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers.</a>	Not Regulated.
<b>C'wealth Comcare</b>	The requirements of the Nationally Consistent Approval framework are incorporated into the <a href="#">Criteria for approval or renewal of approval as a rehabilitation program provider — refer to Appendix 1 — Principle 4.1.</a>	Fees are not prescribed by Comcare.
<b>C'wealth Seacare</b>	Minimum requirements the same as <a href="#">Comcare's.</a>	Providers are approved by <a href="#">Comcare.</a>
<b>C'wealth DVA</b>	Approved program provider means: (a) a person or body that is an approved program provider for the purposes of the <i>Safety, Rehabilitation and Compensation Act 1988</i> ; or (b) a person nominated in writing by a rehabilitation authority, being a person the rehabilitation authority is satisfied has appropriate skills and expertise to design and provide rehabilitation programs — (s41).	As per <a href="#">Comcare.</a>
<b>New Zealand</b>	N/A	N/A

**Table 5.8: Prescribed time periods to establish a return to work plan**

3-point contact		Return to work plan/ personal injury plan developed
<b>New South Wales</b>	1998 Act s43(4) — 3 working days for workers with a significant injury. This is completed by the insurer for injury management planning.	A return to work plan is developed for each injured worker returning to work ( <a href="#">Guidelines for Workplace Return to Work Programs</a> ).
<b>Victoria</b>	N/A	s195 — Plan return to work — see more details under 'Return to Work Plans': (1) An employer must, to the extent that it is reasonable to do so, plan the return to work of a worker from the date on which the employer knows or ought reasonably to have known of the worker's incapacity for work, whichever is the earlier date. Penalty: 120 penalty units for a natural person; 600 penalty units for a body corporate. Under s195(4), employer knows or ought reasonably to have known of the incapacity for work from the beginning of the employment obligation period under s194 — either the date a medical certificate or claim for compensation for weekly payments is received by the employer or the employer is notified of receipt of these documents by the insurer, whichever is the earliest.
<b>Queensland</b>	N/A	No time specified — s220(2).
<b>Western Australia</b>		As soon as practicable after doctor makes recommendation — s155C(1).
<b>South Australia</b>	Not specified within legislation. See: pp. 4–6, <a href="#">Chapter 6, Claims Operational Guidelines on WorkCover's website</a> .	s28A(2)(b) — If an injured worker is receiving income maintenance, a rehabilitation and return to work plan must be established if the worker is or is likely to be incapacitated for more than 13 weeks (but has some prospect of returning to work).
<b>Tasmania</b>	An injury management coordinator to ensure that contact is made with the worker, the employer and the primary treating medical practitioner as soon as practicable after a worker (suffering a significant injury) is assigned to the injury management coordinator — s143C(2).	Return to work plan: Where a worker is, or is likely to be, incapacitated for work for more than 5 working days but less than 28 days, a return to work plan must be prepared before the expiry of 5 days after the worker becomes incapacitated for 5 working days — s143E(1)(a). Injury management plan: Where a worker is, or is likely to be, incapacitated for work for more than 28 days, an injury management plan must be prepared before the expiry of 5 days after the worker becomes incapacitated for 28 days — s143E(1)(b).
<b>Northern Territory</b>	N/A	No time specified — s75B(1).
<b>Australian Capital Territory</b>	3 business days for significant injury — s96.	When suspected that injury is significant (7 days) — s97.
<b>C'wealth Comcare</b>	No time specified.	No time specified.
<b>C'wealth Seacare</b>		
<b>C'wealth DVA</b>	No time specified.	No time specified.
<b>New Zealand</b>		Not specified.



# Chapter 6: Self-insurer arrangements

Each jurisdiction allows employers to self-insure for workers' compensation. This allows companies to manage and pay for all their employees' claims for work-related fatality, injury and illness, rather than paying premiums to insurers to take on those responsibilities.

Self-insured companies must conform to each jurisdiction's specific legislative requirements, such as the level of benefits payable to injured employees, but self-insurance gives them financial freedom to fund and manage their own workers' compensation liabilities.

All workers' compensation jurisdictions in Australia and New Zealand, except Seacare and the Department of Veterans' Affairs, allow employers to self-insure if they meet certain requirements, the most critical of which is the financial capacity to fully fund future liabilities. Regulatory authorities in each jurisdiction also need to be satisfied that self-insuring employers have adequate work health and safety, injury management and return to work arrangements, as well as the capacity to effectively manage workers' compensation.

Once employers self-insure they no longer pay workers' compensation premiums. However, they are still required to pay a levy that is a fair contribution towards the overheads of administering the scheme.

Self-insuring employers can self manage the claims management and rehabilitation of their injured workers and have responsibility for meeting all of their claim liabilities. Self-insurers have to reapply to self-insure after a period of time.

The tables in this chapter outline:

- 6.1 Workers' compensation and self-insurance coverage
- 6.2 Criteria for becoming a self-insurer
- 6.3 Application and approval process, ongoing costs and duration of license
- 6.4 Work health and safety requirements and auditing
- 6.5 Bank guarantees, prudential margins and excess of loss requirements
- 6.6 Restraints on company structure
- 6.7 Outsourcing of case management
- 6.8 Other ongoing license requirements
- 6.9 Reporting requirements, and
- 6.10 Requirements for surrendering a self-insurance licence and penalties for exiting the scheme.

The laws and regulations that must be satisfied to become a self-insurer vary significantly between jurisdictions. If an employer operates in more than one jurisdiction, it must apply separately for self-insurance in each of the jurisdictions in which it operates, except for the Comcare Scheme, which is a national scheme. As at 30 September 2012 there was no mutual recognition between the jurisdictions. Therefore if an employer qualifies for self-insurance in one jurisdiction it does not automatically qualify for recognition in another jurisdiction, except for the Comcare Scheme, which is a national Scheme.

All jurisdictions impose a number of requirements that must be satisfied in order for organisations to be eligible to self-insure. In addition, all jurisdictions apply financial/prudential requirements to establish the long term financial viability of the organisation.

**Table 6.1: Workers' compensation and self-insurance coverage**

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
<b>Employees covered by workers' compensation 2010–11<sup>1</sup></b>	3 165 696	2 643 328	1 965 200	1 094 071	710 400	237 372 (FTE).	112 900	112 184	373 199 <sup>5</sup> (Cth total).	1 795 600 <sup>6</sup>
<b>Employees covered by self-insurance</b>	760 000 (approx). <sup>2</sup>	162 351 <sup>3</sup> (approx).	176 499	102 100	—	10 748 (FTE)	4 159	3 200	163 000 (2009–10).	—
<b>Employees covered by self-insurance (%)</b>	24	6.1	9.0	9.3	—	4.67	3.7	<1	44.7 (2009–10).	—
<b>Number of self-insurer licences</b>	59, plus 7 specialised insurers.	38	25	27	66	11	4	7	29 (2009–10).	—
<b>Number of self-insured employers<sup>1</sup></b>	41 self-insurers, 18 group self-insurers with 126 subsidiaries.	200	258	27	66 private and approx 55 Crown.	11	Government is a self insurer by legislation and is not required to be licenced.	7	29 (2009–10).	148
<b>Employers covered by self-insurance (%)</b>	N/A	0.1 <sup>4</sup>	0.16 (approx).	—	38.29	N/A	N/A	<1	13 (of employers).	0.03

1 The figures in this table aim to give the reader an indication of the number of self-insurers in each scheme. For exact details on self-insurance statistics, readers should contact the relevant jurisdictional authority.

2 Includes number of employees covered by self and specialised insurer workers' compensation arrangements. Includes government employees covered by the Treasury Managed Fund administered by the NSW Self Insurance Corporation.

3 For Victoria this figure does not include the self-insured employee numbers. The figure provided is the total FTEs of all self-insurers for 2011/12.

4 Self-insurers represent 8.15% of the Victorian scheme by remuneration. Although there are a relatively small number of self-insured bodies corporate, they represent some of the largest companies in Victoria. The two biggest self-insurers, in terms of employee numbers, are Westfarmers and Woolworths.

5 Contractors working for the Commonwealth will be recorded against their State of usual residence and hence all employed persons are recorded as being covered by workers' compensation, again in these figures there is an inherent potential degree of inaccuracy.

6 For New Zealand this figure includes self-insurers and self-employed persons who are covered by the Scheme.

Table 6.2: Criteria for becoming a self-insurer

Number of employees		Financial/ prudential requirements
<b>New South Wales</b>	500 permanent staff including full-time and part-time. WorkCover may use its discretion to grant a licence to an employer which does not meet this requirement if such an employer currently holds a self-insurer licence issued by another workers' compensation jurisdiction.	<p><i>Workers Compensation Act 1987</i>, Part 7, Div 5.</p> <p>A self-insurer must have sufficient financial resources to meet its liabilities and be able to demonstrate long term financial viability by way of audited financial statements prepared in accordance with generally accepted accounting principles for the previous five years.</p> <p>WorkCover must be satisfied that self-insurers:</p> <ul style="list-style-type: none"> <li>(i) are adequately capitalised, without any undue reliance on external borrowings — i.e. are conservatively geared</li> <li>(ii) have a strong and sound financial position based on net tangible assets, and</li> <li>(iii) have a sound profit history and positive cash flow.</li> </ul> <p>In determining financial viability and strength, WorkCover is not restricted to the exclusive use of the above financial indicators.</p>
<b>Victoria</b>	N/A	<p>ss142(4)(a) — <i>Accident Compensation Act 1985</i>.</p> <p>Consideration given to both primary and secondary indicators dependent on industry sector i.e. Manufacturing, Finance, Retail, Transport and Other.</p> <p>Primary indicators: Balance Sheet Test (0.9–1.3), Current Liquidity (0.8–1.0), Quick Liquidity (0.5–0.6), Interest Coverage (2–4), Return on Investment (8–10%), Claims liabilities as% of Net Assets (4%), Gearing Ratio (55–80%), Bad Debt Ratio (2%).</p> <p>Secondary indicators: Excess Capital (10%), Stock Turnover (3.5–5%), Debtor Turnover (46–50%), Revenue Growth (2–16%) and Labour Costs (33%), Customer Loan ration (50), Net Interest Margin (1.5) and Operating Costs to Revenue (65%).</p>
<b>Queensland</b>	2000 full time Queensland workers (s71 — <i>Workers' Compensation and Rehabilitation Act 2003</i> ).	<p><i>Workers' Compensation and Rehabilitation Act 2003</i> s71, s72, s75, s84, s86</p> <p>s71 — Employers must be considered fit and proper to be self insurers. (s75) This includes a consideration of the long-term financial viability of the employer, evidenced by its level of capitalisation, profitability and liquidity.</p> <p>Self insurers are required to:</p> <ul style="list-style-type: none"> <li>• s84 — Lodge an unconditional bank guarantee or cash deposit with Q-COMP, for an amount the greater of \$5 million or 150% of the self-insurer's estimated claims liability, and</li> <li>• s86 — have reinsurance cover, where the self-insurer's liability is an amount chosen by the self-insurer that is not less than \$300 000 or more than the set limit without approval.</li> </ul>
<b>Western Australia</b>	N/A	<p>s164 and s165 — Self-insurers are to maintain adequate financial resources to comply with the requirements of the WCIM Act 1981.</p> <p>Guidelines for the Approval and Review of Self-Insurers (the Guidelines) specify the financial resources required. Self-insurers are to provide audited financial statements, which include:</p> <ul style="list-style-type: none"> <li>• Balance Sheet Test (i.e. total tangible assets/total liabilities)</li> <li>• quick liquidity (i.e. current assets less stock/current liabilities)</li> <li>• current liquidity (i.e. current assets/current liabilities)</li> <li>• interest coverage (net profit before tax/net interest expense)</li> <li>• return on investment (net profit before tax/total equity)</li> <li>• claims liability as a percentage of net assets (outstanding claims/net assets), and</li> <li>• gearing ratio (loan capital/total capital employed).</li> </ul> <p>WorkCover WA, at its discretion, may apply further secondary financial indicators if there are doubts concerning the organisation's financial viability. These can be found in appendix 2 of the Guidelines.</p> <p><b>Guidance material:</b></p> <p><a href="#">Guidelines for the Approval and Review of Self-Insurers.</a></p> <p><a href="#">Approved Self-Insurers Performance Indicators.</a></p>

Number of employees		Financial/ prudential requirements
<b>South Australia</b>	There is no formal number specified in the legislation, but the number of workers is relevant to the decision to grant or renew self-insurance. The current WorkCover policy is that employment of a minimum of 200 workers is considered adequate.	<p>s60 and s61.</p> <ul style="list-style-type: none"> <li>• net worth of \$50 million or higher</li> <li>• gearing ratio of 2.0 or lower</li> <li>• liquidity ratio of 1.3:1 or higher</li> <li>• profitability ratio of 10% per annum on shareholders funds, and</li> <li>• positive rating by a mercantile agency of risk lower than the industry average.</li> </ul>
<b>Tasmania</b>	N/A	<p>Part IX, Div 2, s105.</p> <p>s105(2) — In granting a self-insurer permit, the Board is to take into account the applicant's financial history and ability to satisfy such prudential standards as the Board determines .</p> <p>On applying for a self-insurer permit, the applicant must provide the Board with, amongst other things:</p> <ul style="list-style-type: none"> <li>• a completed financial indicators form (<a href="#">Self Insurers Financial Indicators Form</a>) (<a href="#">Providing financial indicators information (SI — 9)</a>)</li> <li>• a desktop review of financial information by an independent expert <a href="#">The independent assessment/desktop review of financial indicators (SI — 10)</a></li> <li>• copies of the organisation's last three annual reports</li> <li>• there may be extra requirements for a new entity employer — see <a href="#">Additional financial requirements for a new entity employer (SI — 2)</a></li> <li>• once the Board has granted provisional approval for a self-insurer permit, the applicant must provide: <ul style="list-style-type: none"> <li>• a financial undertaking from an APRA approved financial institution — see <a href="#">Providing a Financial Undertaking (SI — 11)</a></li> <li>• <a href="#">How the amount of a Financial Undertaking is determined (SI — 12)</a> and <a href="#">Financial Undertaking Form</a></li> <li>• evidence of an Excess of Loss Policy secured by the organisation — see <a href="#">Securing an excess of loss policy (SI — 13)</a>, and</li> <li>• a Deed and Power of Attorney — see <a href="#">Completing the Irrevocable Power of Attorney (SI — 17)</a>.</li> </ul> </li> </ul> <p><a href="#">For more information see How to apply for a permit to insure (self-insurer) (SI — 1).</a></p>
<b>Northern Territory</b>	N/A	<p>s119 and s120.</p> <p>Financial viability of the employer — s119(3)(d), which is to be demonstrated through:</p> <ul style="list-style-type: none"> <li>• the provision of the company's three latest detailed annual balance sheets, including profit and loss statements, together with notes and their auditor's report thereon</li> <li>• an actuarial report on the company, which details its current NT workers' compensation liabilities and ability to meet both its current and expected liabilities under the Act</li> <li>• reinsurance cover of an unlimited amount in excess of the company's liability of \$1 million (indexed) for any one event, and</li> <li>• a three year history of the company's Northern Territory workers' compensation claims.</li> </ul>
<b>Australian Capital Territory</b>	N/A	<p>Workers Compensation Regulation 2002, Part 10.</p> <p>Copy of employer's annual report and balance sheet for the previous 3 years.</p> <p>Actuarial report containing:</p> <ul style="list-style-type: none"> <li>• estimate of current outstanding liability in relation to compensable injuries</li> <li>• estimate of the total of the employer's expected liability for each year in relation to which the employer is applying to be a self-insurer, and</li> <li>• estimate of the total of the expected payments in satisfaction of the employer's liability for compensable injuries that will be made for each year in relation to which the employer is applying to be a self-insurer.</li> </ul> <p>A written statement by the employer that the employer will be able to meet present and future claims under the Act for which the employer is, or is expected to be liable.</p>



Number of employees		Financial/ prudential requirements
<b>C'wealth Comcare</b>	As per any Ministerial s100 guidelines	<p>Part VIII — Financial:</p> <ul style="list-style-type: none"> <li>• provide independent actuarial estimate of the liabilities that the licensee is likely to incur over the first 12 and 24 months of the licence</li> <li>• provide previous 5 years' audited statements</li> <li>• quality assets and liabilities will be assessed</li> <li>• up to date independent valuations of plant, property and equipment may be required, and</li> <li>• provide certification from principal officer that they are not aware of any likely events which may materially impact on the suitability of the applicant for approval.</li> </ul> <p>Prudential:</p> <ul style="list-style-type: none"> <li>• must have actuary prepare a liability report to Commission's requirements</li> <li>• must estimate outstanding liability at the end of the first 2 years' of licence and the level of guarantee required</li> <li>• must recommend a level of provisions to be made in to accounts and appropriate reinsurance arrangements and comment on suitability of arrangements, and</li> <li>• licensee required to obtain bank or other guarantees in the form required by the Commission and before the commencement of the licence.</li> </ul>
<b>New Zealand</b>	<p>No specific minimum employee number.</p> <p>In practice, the pricing mechanism makes entry to the program not financially viable to employer whose standard levy is less than NZ\$150 000.</p>	<p>s185 — Employers must provide evidence to prove their solvency and their ability to meet their obligations under the programme prior to acceptance in to the programme.</p> <p>ACC is required to satisfy itself in respect of an employers net worth, that the employer's contingent liabilities are not excessive, that it has satisfactory solvency, liquidity and profitability ratios over a period of time (usually three years).</p> <p>The measures are:</p> <ul style="list-style-type: none"> <li>• it has substantial net worth</li> <li>• that its contingent liabilities are not excessive (details to be provided including an evaluation as to likely crystallisation of those liabilities)</li> <li>• it has an appropriate working capital ratio based on current assets divided by current liabilities</li> <li>• it has an appropriate equity to debt ratio, and</li> <li>• it has an appropriate return on equity.</li> </ul> <p>These figures should, where possible, be provided for the 3 financial periods preceding the application and include best estimates for at least the then current financial period and the next financial period ("period" normally meaning a year).</p>

**Table 6.3: Approval process, application and ongoing costs and duration of licence**

Applications process	Application and ongoing costs	Duration of licence
<p><b>New South Wales</b></p> <ol style="list-style-type: none"> <li>1. Acknowledge receipt of application fee.</li> <li>2. Validate application information and request missing or additional information required for the review.</li> <li>3. Review application in different areas including financial, injury and claims management (case management), and data management and, conduct OHS management system audit.</li> <li>4. Prepare Board or CEO Submission to recommend either approving or rejecting application.</li> <li>5. Prepare letter to notify the applicant of either granting the licence with the date of commencement or rejecting the application.</li> </ol>	<p>One-off cost on application of \$25 000 for Single Self-Insurer licence, \$30 000 for Group Self-Insurer licence.</p> <p>Insurers are required to contribute to the WorkCover Authority Fund under s39 of the <a href="#">Workplace Injury Management and Workers Compensation Act 1998</a> and to the Dust Diseases Fund under s6 of the <i>Workers' Compensation (Dust Diseases) Act 1942</i> on an annual basis.</p>	<p>A licence will be granted for a standard period of 3 years and be capable of renewal for further three-year terms. WorkCover has discretion to grant licences for shorter terms if it believes circumstances are warranted.</p>
<p><b>Victoria</b></p> <p>s140 — <i>Accident Compensation Act 1985</i>.</p> <p>Assessment of organisation's eligibility to apply is undertaken:</p> <ul style="list-style-type: none"> <li>• the body corporate must be the ultimate holding company in Australia, and</li> <li>• must satisfy prescribed minimum requirements as to financial strength and viability.</li> </ul> <p>If eligible, the organisation may submit an application for approval to WorkSafe Victoria. The assessment of the application may include on-site audits, interviews and inspections.</p> <p>Pre-application eligibility fee must be paid as prescribed in the schedule 4 — <i>Accident Compensation Act</i>.</p>	<p>Application fee as prescribed in the schedule 5 of the <a href="#">Accident Compensation Act 1985</a>.</p> <p>Application fee applies to all applications and is calculated as the lesser of:</p> <ul style="list-style-type: none"> <li>• \$53 910 (as at 1 July 2012 and subject to indexation).</li> </ul> <p>A self-insurer must pay contributions into the WorkCover Authority Fund in accordance with s146 of the <i>Accident Compensation Act</i>. Quarterly contributions payable by a self-insurer are determined by WorkSafe based on the rateable remuneration return submitted by a self-insurer pursuant to the Ministerial Order made under s142A(3) — <i>Accident Compensation Act</i>.</p> <p>The amount of contributions payable by a self-insurer pursuant to s146 of the <i>Accident Compensation Act</i> is determined by the formula given in Regulation 15 of the Accident Compensation Regulations 2012.</p>	<p>Initial approval is for a period of three years and any subsequent approvals are for four years unless WorkSafe in its discretion determines that approval has effect for a period of six years.</p> <p>s144(2)(a) and (b) — <i>Accident Compensation Act 1985</i>.</p>
<p><b>Queensland</b></p> <p>s70 — <i>Workers' Compensation and Rehabilitation Act 2003</i> — The application must (a) be made to the Authority in the approved form, and (b) for a group employer be made by all the members of the group wanting to be licensed, and (c) be accompanied by the fee prescribed under a regulation.</p> <p>s77 — The Authority must decide an application within 6 months of receiving it. s71 — The Authority may issue or renew a licence to be a self-insurer to a single employer only if satisfied that certain criteria have been met.</p> <p>see s75: in deciding whether a single employer or group employer is fit and proper, the Authority may consider any relevant matter and must consider the following matters.</p>	<p>Initial application fee for setting up the licence:</p> <ul style="list-style-type: none"> <li>• \$15 000 application fee for single employers, and</li> <li>• \$20 000 application fee for group employers.</li> </ul> <p>s70 <i>Workers' Compensation and Rehabilitation Act 2003</i>, s19 <i>Workers' Compensation and Rehabilitation Regulation 2003</i>.</p> <p>A self-insurer must also pay a levy to Q-COMP each financial year under s81 of the <i>Workers' Compensation and Rehabilitation Act 2003</i>. The amount a self insurer must pay is calculated according to the formula in s20 (<i>Workers' Compensation and Rehabilitation Regulation 2003</i>) and is dependent on their estimated claims liability, and the levy rate set by Q-COMP.</p>	<p>s78 — <i>Workers' Compensation and Rehabilitation Act 2003</i> — Original licence issued for a period of two years, on renewal, licence period can be up to four years.</p>

	Applications process	Application and ongoing costs	Duration of license
<b>Western Australia</b>	<ul style="list-style-type: none"> <li>• Employer submits application to Authority.</li> <li>• Authority reviews and considers the application for self-insurer status.</li> <li>• Authority provides recommendation on the application to the Minister.</li> <li>• The Governor, on recommendation of the Minister, may exempt an employer.</li> <li>• Refer to WorkCover WA's Guidelines for the Approval and Review of Self-Insurers for more information.</li> </ul> <p><a href="#">Guidelines for the Approval and Review of Self-Insurers.</a></p>	<p>Self-insurers are required to contribute annually to the Authority's General Account. The contribution is a percentage (fixed by the Authority) of the total amount of the notional premium of the self-insurer. The minimum contribution is \$40 000.</p> <p>Refer to WorkCover WA's Guidelines for the Approval and Review of Self-Insurers for more information.</p> <p><a href="#">Guidelines for the Approval and Review of Self-Insurers.</a></p>	<p>No initial duration, however (s165 — <i>Workers' Compensation and Injury Management Act 1981</i>) requires that self-insurance arrangements be reviewed at least once a year or when so required by the Minister. The review of an exemption will be based on adherence to the conditions of approval set out under the Guidelines for the Approval and Review of Self-Insurers.</p> <p><a href="#">Guidelines for the Approval and Review of Self-Insurers.</a></p>
<b>South Australia</b>	<p>An indicative time line for the process and requirements are outlined in the Code:</p> <ul style="list-style-type: none"> <li>• must satisfy prescribed minimum requirements as to financial strength and viability</li> <li>• unlikely to be accepted if employs less than 200 employees</li> <li>• application, accompanied by a fee, is submitted for evaluation and consideration</li> <li>• written confirmation by the employer that they have received a copy of the Code, have understood and are prepared to be bound by the Code as a term and condition of registration as a self-insured employer</li> <li>• evaluators meet with the employer to outline and discuss the requirements of the evaluation process. See Chapter 8 of the <a href="#">Code of conduct for self insured employers of the WorkCover Scheme</a> for details</li> <li>• the evaluation process proceeds until WorkCover determines whether the employer has met all appropriate Standards and criteria</li> <li>• the employer and WorkCover agree on a target date for commencement of self-insured employer registration if the application is successful</li> <li>• an actuarial evaluation is obtained to cover both the value of the existing claims liability and to estimate the likely liability that may be incurred during the first year of self-insured employer registration</li> <li>• the employer and WorkCover agree the terms and conditions for the management of transitional liabilities (including all the necessary financial calculations and adjustments)</li> <li>• the Board of WorkCover considers the application, and if appropriate, grants self-insured employer registration, and</li> <li>• the employer submits the required financial guarantee, and evidence of the existence of the excess of loss insurance policy.</li> </ul>	<ul style="list-style-type: none"> <li>• s62 — <i>Workers Rehabilitation and Compensation Act 1986</i>.</li> <li>• A one off application fee applies of \$10 000 (plus GST) plus \$15 (plus GST) per worker employed by the applicant in the state.</li> <li>• Yearly special premium payable by self-insurer is a percentage of the premium that would have been payable if they were not a self-insurer and may be differentiated between different self-insured employers by reference to: <ol style="list-style-type: none"> <li>1. the application of the natural consequences model, and</li> <li>2. application of differentiated and remedial premium paid to reflect additional cost to WorkCover of administering the Act where self-insured employers do not comply with their obligations as a self-insured employer.</li> </ol> </li> </ul>	<p>Licence (registration) granted for an initial period of two years. A self-insurer may apply to WorkCover to renew its registration for further periods. Maximum period of registration for each renewal is three years (s60(4)(d) — <i>Workers Rehabilitation and Compensation Act</i>) and WorkCover Policy on self-insured employer status within the <a href="#">Code of conduct for self insurers under the WorkCover Scheme (18 April 2013)</a>.</p>

Applications process		Application and ongoing costs	Duration of license
<b>Tasmania</b>	<p>An employer must make application to the WorkCover Tasmania Board on the approved form (s104) accompanied by:</p> <ul style="list-style-type: none"> <li>• completed financial indicators form</li> <li>• desktop review of financial information by an independent expert</li> <li>• copies of the organisation's last three annual reports</li> <li>• evidence of high level safety management practices</li> <li>• evidence of high level injury management practices</li> <li>• evidence of high level claims management practices, and</li> <li>• evidence of the organisation's capacity to meet the necessary data reporting requirements.</li> </ul> <p><a href="#">Applying for a self-insurer permit (Guideline S1 — 020).</a></p>	<p>No application fee. However, the applicant is responsible for paying all expenses associated with applying for a self-insurer permit, including expenses associated with:</p> <ul style="list-style-type: none"> <li>• providing a desktop review of financial information by an independent expert</li> <li>• providing a National Audit Tool report by a certified auditor or evidence of JAZ-ANZ certification against AS/NZ 4801:2001 or the National Audit Tool, and</li> <li>• seeking approval of an Injury Management Program.</li> </ul> <p>Once a permit is granted, there are ongoing expenses. These are set out in detail in the <a href="#">Guideline</a>.</p> <p>Requirement to make annual contributions to the WorkCover Tasmania Board and the Nominal Insurer Fund.</p>	Duration ranges from one year to three years.
<b>Northern Territory</b>	s120 — Employer to write to Authority for approval to self-insure.	<p>There is no cost to employers to lodge a self-insurer application. The only fee for employers is for an actuarial assessment to be provided to NT WorkSafe's actuary. Once approved a self-insurer will be required to pay the Territory an amount determined by the Authority as a contribution towards:</p> <ul style="list-style-type: none"> <li>• administration costs of the Work Health Court</li> <li>• administration costs of the Supreme Court associated with proceedings under the Act</li> <li>• costs incurred by the Authority in providing a mediation service, and</li> <li>• cost of printing scheme documents.</li> </ul> <p>They are also subject to contribution to the Nominal Insurer based on nominal market share.</p>	One year.
<b>Australian Capital Territory</b>	<ul style="list-style-type: none"> <li>• Submit application to WorkSafe ACT.</li> <li>• WorkSafe ACT will coordinate the review process.</li> <li>• Once applications have been reviewed recommendations will be made to the appropriate delegate.</li> <li>• Once the Delegate has made their decision, the applicant will be notified.</li> <li>• Should the application be successful, the applicant must complete and return an Acceptance Form within 14 days of the date of notification.</li> </ul>	<p>Application fee to be a self-insurer — \$6892.00 (updated each year) and approval fee — \$6892.00.</p> <p>The insurer must agree to participate in, and pay the costs of, an audit to establish that the insurer has adequate resources to meet the insurer's current and expected liabilities.</p> <p>The insurer must agree to participate in, and pay the costs of, an audit to establish that the insurer has complied with its obligations under the Regulatory Framework (from Dec 2011).</p> <p>Appropriate audit costs and application fee on renewal of licence.</p>	Up to three years.
<b>C'wealth Comcare</b>	<p><b>Process for applying for eligibility</b></p> <p>By Ministerial declaration and provided that the Minister is satisfied that it would be desirable for the Act to apply to employees of a corporation that:</p> <ul style="list-style-type: none"> <li>• is, but is about to cease to be, a Commonwealth authority, or</li> <li>• was previously a Commonwealth authority, or</li> <li>• is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority.</li> </ul> <p>If the corporation is so declared by the Minister, the corporation is then</p>	<ul style="list-style-type: none"> <li>• One off application fee based on size, complexity, need for external financial assessment etc.</li> <li>• Annual licence fee payable. The fee varies based on contributions to regulatory management of the SRC Act scheme with special emphasis on issues relevant to licensees, plus costs specifically applicable to oversighting the licence compliance evaluation program for each licence, and the size of the licensee. There is an WHS contribution to meet regulatory activities in workplace safety.</li> </ul>	Initially for a period for two years and then upto four years.

	Applications process	Application and ongoing costs	Duration of license
	<p>eligible to apply to the Safety, Rehabilitation and Compensation Commission (the Commission) for a licence.</p> <p>Note: Since December 2007 there has been a moratorium on the Minister considering eligibility.</p> <p>Process for applying to become a self-insurer:</p> <ul style="list-style-type: none"> <li>• s102 — <i>Safety and Rehabilitation Act</i>: Once a corporation is declared an eligible corporation by the Minister, it may then apply to the Safety Rehabilitation and Compensation Commission (the Commission) for a licence under section, and</li> <li>• The Commission will consider the application and may grant a licence under s103 and s104 — <i>Safety and Rehabilitation Act</i>.</li> </ul>		
<b>New Zealand</b>	<ul style="list-style-type: none"> <li>• Employer completes an application form providing supporting financial, business and health and safety information.</li> <li>• Notifies all staff in writing about their intention to join.</li> <li>• Consult with employee representatives about intention to join.</li> <li>• Coordinate staff and documentation for the health and safety audit (completed by an ACC approved independent auditor) using the approved audit tool.</li> <li>• Submit application to ACC (the Manager): <ul style="list-style-type: none"> <li>- ACC will undertake the approval process</li> <li>- Once approval process has been undertaken ACC makes decision, and</li> <li>- The applicant will be notified.</li> </ul> </li> </ul>	<p>Pay a portion of the pre-entry audit costs.</p> <p>Cost of the independent audit of Health and Safety.</p>	<p>Approval may be for one to three years at the employer's option.</p> <p>Annual reviews are undertaken in order to ensure entry (including prudential) requirements are being maintained.</p>

## Ongoing Requirements

The majority of jurisdictions require an applicant for a self insurance licence to meet a minimum standard for work health and safety, rehabilitation and/or workers' compensation. In determining the minimum standard required for work health and safety most agencies require the employer to have in place a work health and safety management system or other similar arrangements (i.e. NSW, Victoria, NT, ACT and Commonwealth) which are then audited against a work health and safety audit tool (see Table 6.4). The work health and safety audit tool varies significantly across the jurisdictions. NSW, Victoria, Tasmania and the Commonwealth measure the self-insurer's performance against the National Self-Insurers OHS Audit Tool and audits of rehabilitation and claims management systems.

Queensland requires a satisfactory work health and safety performance. Although no audit tool is stipulated the administrative guidelines indicate that use of the national OHS Audit Tool is required. In South Australia compliance is required with the Self Insurer Standards which can be found at Annexure A to the Code.

In addition to the prudential requirements employers are required to take out bank guarantees or similar guarantees to cover outstanding claims liabilities. Self-insurers are also required to carry excess of loss insurance to cover catastrophic events. Table 6.5 shows the guarantee requirements for self-insurance eligibility requirements across Australia.

Jurisdictions vary in the extent of self-insurance licence coverage from single companies or also including fully owned subsidiaries. Table 6.6 details restraints on company structure.

Normally self-insurers case-manage their own employees, however some jurisdictions allow them to outsource this function. Table 6.7 shows the outsourcing of case management arrangements Australia.

Self-insurer companies are obliged to comply with workers' compensation legislation to at least the same extent as premium-paying companies to maintain their self-insurer status. Licensees may have extra conditions imposed on them which also require compliance measures. Table 6.8 details other ongoing licence requirements.

## Reporting requirements

Self-insurance lends itself to self-regulation providing that adequate control measures are put in place from the outset and a continuous reporting programme is followed. Periodic reporting can be used to monitor performance with the degree of auditing linked to a self-insurer's performance. The better the performance the less need for intervention. Table 6.9 shows the reporting requirements across Australia.

## Requirements for surrendering license and penalties for exiting

Self-insurance is not without risk, the predominant one being that if self-insurers fail, then governments may have to meet the costs of workers' compensation liabilities. Employers may, for a range of reasons, wish to cease being a self-insurer. Some jurisdictions impose penalties on employers who choose to leave their scheme or surrender their self insurance licence and move to the Comcare scheme. See Table 6.10 for a comparison of these requirements and penalties.

Table 6.4: Work health and safety requirements and auditing

Work Health and Safety Requirements		Auditing
<b>New South Wales</b>	WorkCover will measure the applicant's performance against the National Self-Insurers OHS Audit Tool. The applicant must satisfy all requirements in 3 out of 5 categories during the initial OHS audit and achieve 75% conformance for each of the categories audited.	WorkCover will conduct a WHS Management System audit at time of self-insurance application against the National Self-Insurers OHS Audit Tool. Routine WorkCover audits every 3 years thereafter or more frequently if required. 75% conformance required in 2 categories for these subsequent audits. Annual self-audit requirements unless a WorkCover audit has been conducted during that financial year.
<b>Victoria</b>	Safety Management Systems are audited against the National Self-Insurer OHS Audit Tool for all new applicants and current self-insurers. <i>Compliance with Occupational Health and Safety Act 2004</i> — Inspectorate field interventions including enforcement activity, prosecutions and incident notifications. Claims frequency rates and claims costs.	Annual self-audit requirements for the duration of the licence period — Claims Management and Occupational Rehabilitation and Occupational Health and Safety Management Systems. Regulatory audit at time of application for approval and renewal of approval against the National Self-Insurer OHS Audit Tool.
<b>Queensland</b>	<ul style="list-style-type: none"> <li>• s71(2) and s72(2) — The Authority must ask the chief executive of the department within which the <i>Workplace Health and Safety Act 1995</i> is administered to prepare a report about the employer's work health and safety performance.</li> <li>• s71(1)(g)(ii) and s72(1)(h)(ii) — All workplaces of the employer must be adequately serviced by a rehabilitation and Return to Work Coordinator who is in Queensland and employed by the employer under a contract (regardless of whether the contract is a contract of service) and have workplace rehabilitation policies and procedures.</li> </ul>	Insurance performance management plan.
<b>Western Australia</b>	Work health and safety requirements are handled by WorkSafe WA. <a href="#">Occupational Safety and Health Act 1984.</a> <a href="#">Worksafe WA publications.</a>	N/A
<b>South Australia</b>	Compliance with the Self Insurer Standards which can be found at Annexure A to the <a href="#">Code of conduct for self-insurers under the work cover scheme (18 April 2013)</a> . See s60 of the <i>Workers Rehabilitation and Compensation Act 1986</i> .	Evaluation (WHS and injury management/rehabilitation) against the standards will be carried out in preparation for each registration renewal, and at other times should something come to WorkCover's attention that indicates a need for a further evaluation. See 2.5.2 'Performance standards' within the <a href="#">Code of conduct for self-insurers under the work cover scheme (18 April 2013)</a> . WorkCover also monitors self-insured employers throughout non-renewal years. Multi-national self-insurers can elect to be evaluated against the National Audit Tool for OHS but they must be evaluated against the standards for injury management/rehabilitation. See 3.5 'Assessment criteria' within the <a href="#">Code of conduct for self-insurers under the work cover scheme (18 April 2013)</a> .
<b>Tasmania</b>	Must have an established work health and safety management system. Upon application to self insure, a National Audit Tool (NAT) audit report is provided by a certified auditor or evidence of JAS—ANZ certification against AS/NZ 4801:200 and the National Audit Tool. Must undertake annual self audits using NAT and forward results to the WorkCover Tasmania Board. (Where certification under a JAS-ANZ certification program has been achieved, the annual self audit will not normally be required). <a href="#">Meeting self-insurer permit conditions (Guideline S1 — 5).</a> <a href="#">Conducting the annual self-assessment of your occupational health and safety management systems (SI — 15).</a>	Work health and safety management system to be self-audited annually, with the use of the National Audit Tool as the audit tool. <a href="#">Conducting the annual self-assessment of your occupational health and safety management systems (SI — 15).</a> WorkCover surveillance audits are conducted annually as well. <a href="#">WorkCover surveillance audits (Guideline SI — 14).</a>

Work Health and Safety Requirements		Auditing
<b>Northern Territory</b>	Evidence that the company's NT operation has in place a WHS management system and evidence that the company's WHS policy has been brought to the attention of the company's NT workers.	National Audit Tool is preferred.
<b>Australian Capital Territory</b>	Compliant with employer's duties under <i>Work Health and Safety Act 2011</i> . Copy of work health and safety policy and evidence that it has been brought to the attention of the employer's workers. Has in place a work health and safety management system that complies with Australian Standard 4801.	The self-insurer must agree to participate in, and pay the costs of, an audit to establish that the self-insurer has adequate resources to meet its current and expected liabilities under the Act. The employer must agree to participate in, and pay the costs of, an audit to establish that the employer has complied with its regulatory obligations.
<b>C'wealth Comcare</b>	Previous 12 months performance in conforming and complying with WHS, rehabilitation and workers' compensation. The following will be examined: <ul style="list-style-type: none"> <li>• performance record under the <i>Work Health and Safety Act</i> and all the requirements of any applicable laws of a state or territory with respect to health and safety of employees in relation to recorded injury rates, provision of notification and reports, investigations/inspections, audits and any breaches in prosecution</li> <li>• s41 — Obligations as a rehabilitation authority, especially in relation to any rehabilitation guidelines issued by Comcare, and</li> <li>• claims management obligations including payment of premium, record of early lodgement of claims to claims manager, provision of relevant employment information and quick and accurate payment of employee benefits in accordance with workers' compensation legislation.</li> </ul> Self-insurers are audited against the National Self-Insurer OHS Audit Tool. (Only for WHS management system also audited against the Commission's endorsed Rehabilitation and Claims Management system audit tools).	<ul style="list-style-type: none"> <li>• Pre and post licence evaluations occur in the period approaching and immediately after the grant of licence. External audits in WHS, rehabilitation and claims management systems are performed in the first year a licence is granted and in the last year of each licence period. External audits of licensees in other years are based on a 'tier' model framework. Licensees are required to audit themselves every year and, unless in tier 3, present the results to Comcare for desktop auditing.</li> <li>• Where using a contracted claims management service provider the licensee is required to audit that provider each year and provide Comcare with a written report on the claims manager's performance.</li> <li>• Must cooperate with, and give assistance to, the Commission or its representatives in respect of any audits and evaluations conducted by the Commission or its representatives.</li> <li>• Data quality audits are conducted by Comcare to assess the accuracy of data submitted to the Commission Data Warehouse. Each licensee is required to be audited by Comcare at least once every two years or annually if circumstances require it.</li> </ul>
<b>New Zealand</b>	An audit of an employer's health and safety systems and practices is carried out as part of the entry requirements. A comprehensive entry audit is undertaken in order to satisfy Accident Compensation Corporation that an employer has the capacity and capability to manage and administer claims at least to the same standard as Accident Compensation Corporation. Every Accredited Employer must agree to provide to each employee without charge a written statement in plain English that specifies the procedures and requirements under its contract in relation to the lodging of claims, provision of treatment, handling of claims, assessment of incapacity, assessment of capacity for work, and dispute resolution.	Monitoring and audit programme includes: <ul style="list-style-type: none"> <li>• a review of the reporting of claims details and expenditure to be utilised to provide regular comparative benchmarking reports for the Manager and the individual Accredited Employer</li> <li>• onsite audits at least annually of claims management performance</li> <li>• regular meetings between the account manager and the Accredited Employer (the frequency of which will depend on the experience of the individual Accredited Employer)</li> <li>• in the discretion of the Manager and in conjunction with the annual audit programme, a claimant satisfaction survey to determine overall claimant satisfaction with the Accredited Employers Program</li> <li>• active liaison with Accredited Employer's workplace employee representatives (if any)</li> <li>• monitoring of the ongoing solvency of the Accredited Employer and its expected ability to meet its obligations under the Accreditation Agreement, and</li> <li>• annual health and safety audit using approved audit tool.</li> </ul>



Table 6.5: Bank guarantees/ prudential margins and excess of loss requirements

Bank guarantees/ prudential margins		Excess of loss requirements
<b>New South Wales</b>	Initial security equivalent to tariff premium (WIC rate X estimated wages) for the ensuing twelve months plus a prudential margin of 50%. WorkCover has discretion to seek additional security if it believes circumstances are warranted. For subsequent reviews 150% of self-insurer liabilities including a prospective component for the 12 months post balance date.	<p>A self-insurer must obtain and maintain unlimited reinsurance cover during the currency of the licence so as to restrict its liabilities under the <i>Workers Compensation Act 1987</i> and independently of the <i>Workers Compensation Act 1987</i> to a maximum amount approved by WorkCover in respect of any one event. The reinsurance cover must be provided by an insurance company authorised by the Australian Prudential Regulation Authority.</p> <p>A retention amount under the above policy or policies, provided that it is within the range of \$100 000 to \$1 000 000 per event is acceptable to WorkCover.</p> <p>Retentions in excess of \$1 000 000 will require prior approval by WorkCover. In such instances WorkCover will require the self-insurer to undertake and provide an assessment of the likely cost of risk retention and the appropriateness of the level of retention sought as part of the approval process.</p>
<b>Victoria</b>	<p>s148 — <i>Accident Compensation Act 1985</i> — 150% of the assessed liability or \$3.0 million (whichever is greater).</p> <p>When determining the quantum coverage of a guarantee that a self-insurer must have in force at all times given by an Authorised Deposit-Taking Institution (“ADI”) in respect of its assessed liability, the valuation of the self-insurer’s assessed liability must include a prospective component.</p>	<p>The Ministerial Order “Terms and Conditions of Approval as a Self-insurer” made under s142A(3) of the <i>Accident Compensation Act 1985</i> has set out the requirement of a contract of insurance in respect of contingent liabilities that a self-insurer must have in force at all times under s148(1)(b) of the <i>Accident Compensation Act</i>.</p> <p>A self-insurer may select an excess for its contingent liability insurance policy of any amount not greater than \$5 million. There is no minimum excess amount.</p>
<b>Queensland</b>	s84 <i>Workers’ Compensation and Rehabilitation Act 2003</i> — Provision of an unconditional bank guarantee or cash deposit of 150% of estimated claims liability or \$5 million (whichever is the greater).	s86, <i>Workers’ Compensation and Rehabilitation Act 2003</i> — Retention of reinsurance for an unlimited amount in excess of the self-insurer’s liability for each event that may happen during the period of reinsurance. The self-insurer’s liability must be not less than \$300 000 and not more than the limit set by the Authority’s board on application by the self-insurer.
<b>Western Australia</b>	<p>Bank guarantee to be determined by the Authority upon application or review. The minimum level for the bond is \$1 million or 150% of the central estimate of outstanding claims liability (whichever is greater).</p> <p>Actuarial assessments of outstanding claim liability are required on an annual basis and used to determine security amounts.</p> <p>In the first year of approval the amount of bond will be rounded to the next million. Subsequent years the amount shall be rounded up in accordance with the Authority’s approval methodology.</p> <p>Refer to WorkCover WA’s Guidelines for the Approval and Review of Self-Insurers for more information.</p> <p><a href="#">Guidelines for the Approval and Review of Self-Insurers.</a></p>	<p>Common law and catastrophe insurance policy for a minimum of \$50 million for any one claim or series of claims arising out of one event.</p> <p>Refer to WorkCover WA’s Guidelines for the Approval and Review of Self-Insurers for more information.</p> <p><a href="#">Guidelines for the Approval and Review of Self-Insurers.</a></p>
<b>South Australia</b>	<p>Outstanding liability multiplied by a prudential margin of 2. It is revised annually in accordance with an actuarial report the employer must submit within 3 months after the end of the financial year. Minimum guarantee applies 2012 — \$780 000 indexed. Refer s1 — <i>Workers Rehabilitation and Compensation Regulations, 2010</i>.</p> <p>See Annexure C, Schedule 1 of <a href="#">the Code of conduct for self-insurers under the work cover scheme (18 April 2013)</a> entitled ‘Self insured employers terms and conditions of registration’.</p>	<p>Self-insurers need to maintain an excess of loss insurance policy that must satisfy:</p> <ul style="list-style-type: none"> <li>• \$100 million on the sum insured</li> <li>• a deductible of not less than \$500 000 per event or series of events, and</li> <li>• if the self-insured employer elects to include a stop loss excess or aggregate excess, such stop loss or aggregate excess must not be less than the higher of: <ul style="list-style-type: none"> <li>- three times the individual incident excess, or</li> <li>- 10% above the average incurred claim cost for the prior 3 years.</li> </ul> </li> </ul> <p>Refer to Annexure C, Regulation 9, s1 of the <i>Workers Rehabilitation and Compensation Regulations, 2010</i>. s60 — WRC Act.</p>

Bank guarantees/ prudential margins		Excess of loss requirements
<b>Tasmania</b>	<p>For self-insurers with less than 3 years experience:</p> <ul style="list-style-type: none"> <li>• Bank guarantee equal to: <ul style="list-style-type: none"> <li>- Yr 1: Notional Premium x 100%</li> <li>- Yr 2: Notional Premium x 140%</li> <li>- Yr 3: Notional Premium x 180%</li> </ul> </li> <li>+ the greater of: <ul style="list-style-type: none"> <li>- 30% of the adjusted notional premium, or</li> <li>- the quantum of the catastrophe deductible (per event retention), or</li> <li>- \$500 000.</li> </ul> </li> </ul> <p>For self-insurers with more than 3 years experience:</p> <ul style="list-style-type: none"> <li>• Minimum of 150% of central estimate of outstanding claims liabilities or \$1m whichever is greater.</li> </ul> <p><a href="#">Providing a financial undertaking (Guideline S1—11).</a>  <a href="#">How the amount of a Financial Undertaking is determined (SI—12).</a></p>	<p>Excess of loss policy for a minimum amount of \$50 million and power of attorney over policy.</p> <p><a href="#">Securing an Excess of Loss Policy (Guideline SI—13) f.</a></p>
<b>Northern Territory</b>	150% of self-insurer liabilities on application and as assessed at each review.	Catastrophe Reinsurance of an unlimited amount excess of \$1m.
<b>Australian Capital Territory</b>	<p>Guarantee from an authorised deposit-taking institution for the greater amount of:</p> <ul style="list-style-type: none"> <li>• \$750 000, or</li> <li>• an amount calculated by an actuary to be the estimate of outstanding claims liability at the balance date, plus a prudential margin of 30%.</li> </ul>	The application must provide evidence that the employer has reinsurance of \$500,000 (CPI indexed) for a single event to cover the employer's future liability under the Act.
<b>C'wealth Comcare</b>	<p>The guarantee must be for an amount calculated by the actuary as the greater of: a) the 95th percentile of Outstanding Claims Liabilities at the Balance Date and the addition of one reinsurance policy retention amount, or b) the 95th percentile of projected Outstanding Claims Liabilities in 12/18/24* months time from the Balance Date and the addition of one reinsurance policy retention amount subject to a minimum amount of \$2 500 000.</p> <p>*Note: actual licence will specify: 12 months for licences in the 6th or more year of licence; 18 months for licences in the 4th — 5th year of licence; 24 months for licences in the 1st — 3rd year of licence.</p>	Variable retention based on actuarial advice.
<b>New Zealand</b>	No formal security is taken. No legislative provision to allow formal security arrangements like debentures over assets, bank bonds or guarantees or any other third party guarantees. An employer must prove it has the ability to meet its program obligations completely in its own right in order to be accredited.	Accident Compensation Corporation provides Stop Loss Cover within a range of 160% to 250% of the defined risk. Stop Loss Cover is mandatory for Full Self Cover employers and optional for the Partnership Discount Plans. Any other reinsurance is prohibited under the legislation. The accredited employer is required to carry the risk of work place injury with no ability to offload any of this risk.

**Table 6.6: Self-insurance restraints on company structure**

Restraints on company structure	
<b>New South Wales</b>	<p>An application for a self insurance licence can be made by “any employer” (s210 — <i>Workers Compensation Act 1987</i>) in accordance with the requirements of WorkCover’s licensing policy for self-insurers. A self insurer licence may be granted to an employer or a group self insurer licence may be granted to a holding company and all wholly owned subsidiaries of the company that are employers in NSW.</p> <p>Under a group licence there is no provision for selective inclusion of subsidiaries by the applicant. The legislation specifies that only wholly owned subsidiary companies are to be included in the group licence. For group licences the applicant company would generally be the ultimate holding company in Australia.</p> <p>For group licences a cross guarantee or a holding company guarantee is required.</p>
<b>Victoria</b>	Ultimate holding company in Australia and all wholly owned subsidiaries — s141(1).
<b>Queensland</b>	<p>Group licences are restricted to groups of employers that are made up as follows:</p> <ul style="list-style-type: none"> <li>• employers who are in the same industry and have a pre-existing stable business relationship, or</li> <li>• related bodies corporate (as defined by the <i>Corporations Act 2001</i>).</li> </ul>
<b>Western Australia</b>	N/A
<b>South Australia</b>	A group of employers may apply for registration as a group of self-insured employers providing they are related corporations. Registration must include all related corporations.
<b>Tasmania</b>	N/A
<b>Northern Territory</b>	N/A
<b>Australian Capital Territory</b>	N/A
<b>C’wealth Comcare</b>	A licence is required for each legal entity.
<b>New Zealand</b>	<p>Any ‘employer’ in New Zealand is eligible to become ‘accredited’ provided they are able to meet the eligibility requirements outlined in regulation. Eligibility is not confined by structure. Therefore any employer entity, including by way of example a company (including a consolidated group of companies), a partnership, an incorporated society, a government, state owned entities, district hospital boards, local government authorities and incorporated societies.</p> <p>A group of employers may become accredited where each member of the group meets the definition of a subsidiary company, as determined by the Companies Act. Any subsidiary where ownership is greater than 50% is able to be a member of the accredited group.</p>

**Table 6.7 Outsourcing of Case Management**

Outsourcing allowed	
<b>New South Wales</b>	WorkCover may use its discretion to approve outsourcing arrangements for injury and claims management and data lodgement to a suitably qualified third party, subject to it being satisfied that such an arrangement will not lead to a decrease in established service standards to injured workers.
<b>Victoria</b>	Under s147A — <i>Accident Compensation Act 1985</i> — A self-insurer may appoint a person approved by the Authority to act as the agent to carry out the functions — Parts III (dispute resolution) and IV (payment of compensation).
<b>Queensland</b>	Yes — s92(4).
<b>Western Australia</b>	Yes — see the <a href="#">Guidelines for the Approval and Review of Self-Insurers</a> .
<b>South Australia</b>	Under s63(1) of the <i>Workers' Rehabilitation and Compensation Act 1986</i> decisions must be made by the self insurer itself and this cannot be delegated.
<b>Tasmania</b>	Yes
<b>Northern Territory</b>	Not covered in legislation. Expectation is claims are self managed.
<b>Australian Capital Territory</b>	Yes
<b>C'wealth Comcare</b>	Licencees are allowed to outsource their claims management if they receive authorisation from the Commission. Licence does not cover claims with a date of injury which pre-dates the date of the licence and the licensee must continue to manage these claims as per state/territory arrangements.
<b>C'wealth Seacare</b>	—
<b>New Zealand</b>	Although accredited employers may, with the consent of the Manager, retain third party providers to assist in the management of workplace injuries this is subject to them maintaining direct personal involvement with the claimant.

Table 6.8: Other ongoing licence requirements

Compliance with legislation	Ongoing licence requirements	Other matters
<p><b>New South Wales</b></p>	<p>Self-insurers must comply with all statutory requirements and conditions of licence for licence continuity. WorkCover undertakes ongoing monitoring and review of self-insurers. Self-insurers provide specified information four months after their financial year end to enable an annual review (refer to Table 6.9 Reporting Requirements).</p>	<p>—</p>
<p><b>Victoria</b></p>	<p>Self-insurers must comply with the <i>Accident Compensation Act 1985</i>, a Ministerial Order, the regulations, any terms and conditions of approval and other legislation (e.g. <i>Occupational Health and Safety Act 2004</i>). Self-insurers are also required to provide specified information at specified times to WorkSafe.</p> <p>Refer to Tables 6.4, 6.5 and 6.8 for details.</p>	<p>A self-insurer should notify WorkSafe as soon as they become aware of any strategically significant matter.</p>
<p><b>Queensland</b></p>	<ul style="list-style-type: none"> <li>• Ability to provide data in the format and at time intervals required by Q-COMP.</li> <li>• A self-insurer must supply Q-COMP summary information about claims processed on their system.</li> </ul> <p>s93 — <i>Workers' Compensation and Rehabilitation Act 2003</i> — When requested, provide copies of:</p> <ul style="list-style-type: none"> <li>• documents relating to all claims made</li> <li>• documents that may assist in assessing the quality and timeliness of claims and rehabilitation management</li> <li>• documents that may assist in assessing the self-insurers financial situation, and</li> <li>• any other documents required to be kept under the licence.</li> </ul>	<p>—</p>
<p><b>Western Australia</b></p>	<p>Self-insurers are required to meet their financial, reporting and claims management obligations as specified under the <i>Workers' Compensation and Injury Management Act 1981</i> and the Guideline for the Approval and Review of Self-Insurers. Refer to tables 6.8a — e for further information.</p> <p><a href="#">Guidelines for the Approval and Review of Self-Insurers.</a></p>	<p>Self-insurers must:</p> <ul style="list-style-type: none"> <li>• demonstrate expertise to determine claims within the State in time limits specified</li> <li>• effect weekly payments within frequency specified</li> <li>• carry out responsibility with respect to injury management</li> <li>• submit accurate and timely statistical returns/information</li> <li>• provide and maintain a copy of their organisational chart</li> <li>• demonstrate that an injury management programme is in place, and</li> <li>• confirm that information</li> </ul>

	Compliance with legislation	Ongoing licence requirements	Other matters
	<a href="#">Guidelines for the Approval and Review of Self-Insurers.</a>		<p>management systems utilised by the self insurer are able to meet the compliance standards as defined in the Q1 specifications including the provision of data and returns.</p> <p><a href="#">Guidelines for the Approval and Review of Self-Insurers.</a></p>
<b>South Australia</b>	<p>Self-insurers must comply with all statutory requirements and conditions of registration for registration continuity. Failure to meet requirements may result in reduction, revocation or non-renewal of self-insured registration. Furthermore, any proven systemic abuse of a delegation under the Act may result in the delegation being removed. See s60 of the <i>Workers' Rehabilitation and Compensation Act 1986</i> and 3.6 within <a href="#">Code of conduct for self-insurers under the work cover scheme (18 April 2013)</a>.</p>	<p>Self-insurers must comply with all statutory requirements and conditions of registration for registration continuity. See <a href="#">Code of conduct for self-insurers under the work cover scheme (18 April 2013)</a>.</p>	—
<b>Tasmania</b>	<p>s107 — Self-insurers must comply with permit conditions imposed by the Board. A self-insurer who fails to comply or contravenes any permit condition is guilty of an offence and liable on summary conviction to a fine not exceeding 100 penalty units.</p> <p>The Board may revoke or suspend a permit if it is satisfied that the self-insurer has failed to comply with any provisions of the Act and the failure constitutes a significant breach of the Act or the self-insurer has been convicted of an offence against the — s111.</p> <p><a href="#">Meeting self-insurer permit conditions (Guideline SI—5)</a>.</p> <p><a href="#">Self-insurer permit conditions.</a></p>	<p>Self-insurers are to comply with the legislation and with permit conditions: <a href="#">Self-Insurer Permit Conditions</a>, and <a href="#">Meeting self-insurer permit conditions (SI—5)</a>.</p>	—
<b>Northern Territory</b>	<p>s124 — The Authority may at any time, in its absolute discretion, by notice in writing to an approved insurer or self-insurer, revoke or suspend approval.</p>	N/A	<p>Ongoing satisfactory demonstration of the employer's ability to:</p> <ul style="list-style-type: none"> <li>• provide statistical and other information required</li> <li>• provide financial contributions as requested, and</li> <li>• adequately provide for and manage the company's Northern Territory workers' compensation claims.</li> </ul> <p>Adequate expertise to determine claims within the Territory in the time limits specified. Effect weekly payments within the frequency specified. Carry out responsibility with respect to injury management. Submit accurate and timely</p>

Compliance with legislation	Ongoing licence requirements	Other matters	
<p><b>Australian Capital Territory</b></p>	<p>Continue to meet obligations under the Act and Regulations and any other protocol approved by the Minister that relate to self-insurers.</p> <p>Ensure that workers' compensation claim form, register of injuries and early injury notification form comply with Workers' Compensation Insurers Form Specifications.</p> <p>Comply with Workers' Compensation Insurers data reporting requirements.</p>	<p>Self-insurers must comply with all statutory requirements and conditions of licence for licence continuity.</p>	<p>statistical returns/information — s119 and s122.</p> <p>The self-insurer must agree to participate in, and pay the costs of, an audit to establish that the self-insurer has adequate resources to meet its current and expected liabilities under the Act.</p> <p>The employer must agree to participate in, and pay the costs of, an audit to establish that the employer has complied with its obligations under the Regulatory Framework.</p>
<p><b>C'wealth Comcare</b></p>	<p>Licensee must comply with the requirements of:</p> <ul style="list-style-type: none"> <li>• the <i>Safety, Rehabilitation and Compensation Act</i>, Regulations and any other applicable guidelines issued by the Commission under s73A of the <i>Safety, Rehabilitation and Compensation Act</i> in respect to rehabilitation and compensation</li> <li>• Commonwealth WHS Act and any applicable laws of the states or territories with respect to safety and health of employees</li> <li>• any such guidelines dealing with covert surveillance of employees, and</li> <li>• conditions of licence relating to financial reporting and prudential arrangements.</li> </ul>	<p>Comply with any written directions given by the Commission. If claims are managed by a claims manager, provide a copy of the Commission's directions to the claims manager. Advise and provide a copy of the initiating process to Comcare as soon as possible of any court proceedings in relation to a matter arising in respect of a claim. Must notify Comcare in writing immediately that the licensee becomes aware:</p> <ul style="list-style-type: none"> <li>a) licensee has not complied with, or not likely to comply with, a condition of the licence</li> <li>b) of any event that may materially impact upon its sustainability to hold a licence, including its capacity to meet its liabilities under the <i>Safety, Rehabilitation and Compensation Act</i> or of any material change in financial position</li> <li>c) any material change to its legal structure, ownership or control</li> <li>d) of any significant change in its employee numbers or significant change in the risk profile of the work undertaken by its employees.</li> </ul> <p>Provide Commission upon request, information relating to the licensee's operations. Ensure claims manager complies with the conditions of the licence. Be accountable for all claims management policies issued by the claims manager. Notify the Commission in writing as soon as possible after it becomes aware that the claims manager has done, or omitted to do, something which has the effect that the licensee is, or likely to be, in breach of a term or condition of the licence. Must enter into and maintain a written contract with the claims manager and provide a copy of the contract to the Commission. Obligations imposed by the licence must be written into the contract between the licensee and the claims manager. Provide a yearly guarantee. Maintain an appropriate level of reinsurance.</p>	<p>—</p>

	Compliance with legislation	Ongoing licence requirements	Other matters
<b>New Zealand</b>	<p>Licensee must comply with the requirements of:</p> <ul style="list-style-type: none"> <li>• the AC Act, Regulations and any other applicable guidelines issued by Accident Compensation Corporation</li> <li>• the <i>Privacy Act 1993</i></li> <li>• Health Information Privacy Code 1994, and</li> <li>• the Code of Accident Compensation Corporation Claimants' Rights.</li> </ul>	<p>Comply with any written directions given by Accident Compensation Corporation. Advise Accident Compensation Corporation of:</p> <ul style="list-style-type: none"> <li>• any serious ongoing claim or claims with a duration &lt; 12 months as soon as practicable</li> <li>• any insolvency event</li> <li>• any report from Occupational Health and Safety (Department of Labour)</li> <li>• anything that could contribute to Accident Compensation Corporation reviewing the status of the employer, and</li> <li>• provide a copy of the initiating process to Accident Compensation Corporation as soon as possible of any court proceedings in relation to a matter arising in respect of a claim.</li> </ul> <p>Provide Accident Compensation Corporation upon request, information relating to the licensee's operations. Ensure claims manager complies with the conditions of the licence. Retain overall responsibility for claim and case management. Notify Accident Compensation Corporation in writing as soon as possible after it becomes aware that the claims manager has done, or omitted to do, something which has the effect that the licensee is, or likely to be, in breach of a term or condition of the licence. Must enter into and maintain a written contract with the claims manager and provide a copy of the contract to the Accident Compensation Corporation.</p>	—



Table 6.9: Reporting requirements

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
<b>Claims data</b>										
<b>Frequency</b>	Monthly	Quarterly	Monthly	Monthly	Fortnightly	Monthly. Annually. Annually.	Monthly	Monthly	Monthly or as per direction by the Commission.	Monthly
<b>Timing</b>	By the 10th day of the following month.	31 March; 30 June; 30 September; 31 December.	By the 8th day of the following month.	Within 21 days from the end of the month.	By fortnightly schedule agreed between WorkCover and employer.	By the 21st day of the following month. By 31 August each year. By 30 September each year.	By the 15th day of the following month.	By the 10th day of the following month.	By the 10th day of the following month.	At the end of each month, and no later than 5 working days.
<b>Format</b>	Electronic lodgement. Specifications in accordance with Claims Technical Manual V5.6. Injury coding for claims made after 30 June 2011 in accordance with TOOCS 3.1.	Electronic data transfer: remuneration; count of standardised claims; count of > 15 day claims (or >13 weeks over excess claims); total standardised payments on standardised claims; total standardised payments on > 10 day claims; and number of companies in the comparator group.	Electronic data interchange.	Electronic/meets Q1 specifications.	Electronic Data Interchange. Claim data as detailed in Schedule 1 to the <i>Workers Compensation Regulations 2010</i> .	Annual data return. Actuarial assessment of claims.	Electronic data interchange.	Electronic data transfer.	Electronic data interchange/NDS3 format.	The Accredited Employer must regularly report to the Manager on claims, entitlements and expenses arising during the Cover Period and ensuing Claim Management Period.
<b>More information</b>	—	—	<a href="#">Reference material and links — Data specifications.</a>	<a href="#">Guidelines for the Approval and Review of Self-Insurers.</a> <a href="#">Approved Self-Insurers Performance Indicators.</a> <a href="#">Insurer/Self Insurer Electronic Data Specification.</a>	Schedule 1 to the Workers Compensation Regulations or the Self-Insured Code of conduct.	<a href="#">WorkCover Tasmania website.</a>	<a href="#">Contact NT WorkSafe.</a>	<a href="#">Contact WorkSafe ACT.</a>	—	Licensee must comply with the requirements of: <ul style="list-style-type: none"> <li>• the AC Act, Regulations and any other guidelines issued by ACC</li> <li>• the <i>Privacy Act 1993</i></li> <li>• Health Information Privacy Code 1994, and</li> <li>• the Code of ACC Claimants' Rights.</li> </ul>

	New South Wales	Victoria	Queensland	Western Australia	South Australia Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand	
<b>Annual financial information</b>										
<b>Annual report/ financial statements</b>	Annual report including audited financial statements within 4 months of end financial year.	Annual report within 6 months of end of financial year.	Audited financial statements within 20 business days of becoming publicly available. Annual report within 20 business days of becoming publicly available. Wages declaration for NDS purposes only be 31 August each year.	Return on investment required for initial application and for annual review.	Audited financial statements/Annual Report Within 5 months of the end of the employer's financial year.	Annual report by 31 July each year.	Audited financial statements by 31 August each year. Annual report by 31 August each year.	—	Audited financial statements by 31 October each year.	—
<b>Actuarial report/ assessment of claims liabilities</b>	Actuarial assessment of claims liabilities as at balance date provided within 4 months of end of financial year.	Actuarial assessment of claims liabilities Within three months of the end of the financial year.	Actuarial assessment on claims liabilities within 20 business days after the end of each year of the Licence or such other time as agreed between Q-COMP and the licensee.	Claims liability as a% of net assets required for initial application and for annual review. Gearing ratio required for initial application and for annual review.	Actuarial report on outstanding claim liability within 5 months of the end of the employers financial year or at such other time as may be agreed between WorkCover and the employer.	—	Actuarial assessment of claims liabilities by 31 August each year.	Actuarial assessment of claims liabilities incorporated in licence review process.	Actuarial assessment of claims liabilities by 31 August each year. Letter addressed to the Commission signed by the Principal Officer of the licensee certifying that the actuarial assessment has been made in accordance with the licence conditions, a provision has been made in the accounts for meeting the estimated liabilities, and that the licensee has the capacity to meet any single claim up to the reinsurance retention amount.	The measures are: it has substantial net worth; that its contingent liabilities are not excessive (details to be provided including an evaluation as to likely crystallisation of those liabilities); it has an appropriate working capital ratio based on current assets divided by current liabilities; it has an appropriate equity to debt ratio; and it has an appropriate return on equity. These figures should, where possible, be provided for the 3 financial periods preceding the application and include best estimates for at least the then current financial period and the next financial period ("period" normally meaning a year).

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
<b>Guarantees/ audit certificates</b>	Update guarantee or security as required in correspondence, normally within 4 to 6 weeks of submission of actuarial report and determination of security requirement.	Certified remuneration by 31 August each year. Guarantee to cover tail claims Within 4 weeks of WorkSafe notification for guarantee adjustment Audit certificates within 6 months of end financial year. Annual report.	—	Balance sheet test, quick liquidity, current liquidity, interest coverage, return required for initial application and for annual review.	Update financial guarantee. As required in correspondence, normally within one month of submission of actuarial report.	Independent financial Audit Report by 31 August each year.	—	—	Deed between the Commission, Comcare and a bank or insurer for an amount that can be called upon by the Commission in the event a self insurance licence is suspended or revoked by 30 September each year.	Employers must provide evidence to prove their solvency and their ability to meet their obligations under the programme prior to acceptance in to the programme. ACC is required to satisfy itself in respect of an employers net worth, that the employer's contingent liabilities are not excessive, that it has satisfactory solvency, liquidity and profitability ratios over a period of time (usually three years).
<b>Evidence of excess of loss insurance or reinsurance</b>	Evidence of existence of Excess of Loss insurance provided with annual reporting information 4 months after financial year end.	Evidence of existence of Excess of Loss Insurance within 21 days of the commencement of each policy year.	Excess of loss insurance — varies from insurer to insurer.	—	Evidence of existence of Excess of Loss Insurance policy As required in correspondence, normally within one month of submission of actuarial report.	Evidence of existence of Excess of Loss Insurance by 31 August each year.	Claims liabilities and evidence of Excess of Loss Insurance by 31 August each year.	—	Required to maintain an appropriate level of reinsurance for a single event in excess of an amount determined by the Commission (excess amount) Provide a copy to the Actuary and the Commission within seven days of issuing the new policy.	—
<b>Other company information</b>										
<b>Number of employees/ FTE</b>	Number of employees by 31 August each year.	Number of FTE's Remuneration.	Number of FTE's (Minimum 500 if licence issues pre March '99 and 2000 if licence after March '99) annually and at licence renewal — reporting annually and varies by insurer.	The number of full-time and part-time staff employed during the reporting period is to be provided in the annual self-insurer review.	—	—	Number of employees by 31 August each year.	Number of employees by 31 August each year.	Number of employees by 31 August each year.	—
<b>Remuneration or wages declaration</b>	Remuneration by 31 August each year.	Remuneration by 31 August each year.	—	—	Remuneration by 31 July each year.	Workers and wages report by 21 July each year.	Remuneration by 31 August each year.	—	Remuneration by 31 August each year.	—

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
<b>Other</b>	Predominate industry/Workcover Industry Classification by 31 August each year.	Opened/Closed workplace during the reporting period by 31 August each year. Workplace location; Predominate industry/WorkCover Industry Classification; Open/closed workplace during the reporting period — by 31 August each year. National Self-Insurer OHS Audit Tool — self-audit results by 31 August each year. Claims Administration self-audit results by 31 August each year.	Rehabilitation policy and procedures (once per licence period — up to 4 years) — reporting annually and varies by insurer.	Internal dispute resolution services. Material resources (organisational chart). Security obligations (claims liabilities, etc). Insurance obligations (common law cover). Terrorism arrangements (contribution as a result of terrorism) — reporting annually for initial application and for annual review.	Advice of any change in structure or financial relationships that may affect the consideration of the viability of the employer by 31 July each year or as soon as possible after a change has occurred.	Financial undertaking by 30 September each year.	Claims paid and occupation of workers by 31 August each year.	Workplace location, predominate industry/WorkCover Industry Classification by 31 August each year. Insurer data specification reported monthly by the 10th day of the following month.	Workplace location and predominate industry/WorkCover Classification by 31 August each year.	—
<b>More information</b>	—	—	—	—	—	—	—	—	—	Frequency of reporting — upon entry.
<b>Irregular reporting requirements</b>										
<b>Changes to Company structure ownership or control</b>	Notify within 10 business days of any change in effective control or any change in ownership exceeding 20% of shareholding. Notify within 10 business days of acquisitions and dispositions of wholly owned subsidiaries employing in NSW.	Notify within 28 days of the occurrence of any circumstance under s145 of the ACA. Notify within 1 week after becoming aware of these strategically significant matters.	Report within 5 business days of the proposed change: any event that could reasonably be expected to materially impact on the licensee's net tangible assets; any event that could reasonably be expected to materially impact on the licensee's financial viability or ability to meet its liabilities for claims; any intention of the licensee to	—	Report financial and structural details as early as possible (or in advance) any action affecting the corporate structure of the group including disposal of subsidiary, acquisition of subsidiary, formation of new subsidiary, appointment of receivers, administrators or liquidators and takeover of the company etc.	Report as soon as practicable any changes in ownership, directors, structure or financial circumstances.	—	—	Licensee must notify Comcare in writing immediately when it becomes aware of any changes to its legal structure, ownership or control.	—

	New South Wales	Victoria	Queensland	Western Australia	South Australia Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
			withdraw or reduce the bank guarantee or cash deposit lodged with Q-COMP.						
<b>Changes to key personnel responsible for OHS or injury management</b>	Notify within 10 business days of any change or vacancy in the senior management position responsible for claims or injury management or the senior management position with overall responsibility for workers compensation.	—	Report within 5 business days of the proposed change: any event that reasonably could be expected to affect the licensee's occupational health and safety performance; Any intention to change the manner in which any claims are administered or the manner in which the rehabilitation of workers is managed.	Report one month prior to the commencement of any arrangement resulting in change in a self-insurer's outsourcing arrangement of claims management.	Changes of personnel should be reported to WorkCover once they are known as required by the Code.	—	—	—	—
<b>Breaches or failures to comply with licence conditions or changes likely to result in same</b>	—	A self-insurer must immediately notify WorkSafe if they are unable to pay any debts as and when they fall due or they become aware of any event that may prevent them from meeting any other requirement for approval and operation as self-insurer in accordance with (i) the Act or the regulations; or (ii) any terms or conditions of its approval as a self-insurer; or	—	—	Immediately report any changes of the self-insurer that would impact the self-insurance registration.	—	—	Immediately report any changes of the self-insurer that would impact the self-insurance licence.	Licensee must notify Comcare in writing immediately when it becomes aware that it has not complied with, or is not likely to comply with, a condition of licence.  Licensee must notify Comcare in writing immediately when it becomes aware of any event that may materially impact upon its suitability to hold a licence, including its capacity to meet its liabilities under the SRC Act or of any material change in its financial position.

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
		(iii) a Ministerial Order; or (iv) any other subordinate instrument made under the Act or regulations.								
<b>Changes to predominant industry/ employee numbers / risk profile of work</b>	—	—	Report within 5 business days of the proposed change: any event that could reasonably be expected to materially impact on the number of fulltime workers employed in Queensland by the licensee; Any proposed changes to personnel responsible for managing and deciding claims.	—	Self-insurer must notify WorkCoverSA immediately when it becomes aware of any significant change in its employee numbers or significant change in the risk profile or operations of its employment.  Self-insurer must notify WorkCoverSA in writing immediately of any group structure changes including acquisitions, sales etc.	—	—	—	Licensee must notify Comcare in writing immediately when it becomes aware of any significant change in its employee numbers or significant change in the risk profile of the work undertaken by its employees.  Licensee must notify Comcare in writing immediately when it acquires another company and intends on transferring the employees of that company to the licensed company, or merges with another company and intends on transferring the employees of that company to the licensed company.	—
<b>Other</b>	—	Notify WorkSafe (within 28 days of wholly acquiring a scheme-insured body corporate) whether or not the self-insurer elects to assume the liability for the tail claims of a scheme-insured body corporate acquired by a self-insurer.	Report within 5 business days of the proposed change: any event that reasonably could be expected to affect the licensee's occupational health and safety performance; Any intention to change the resources and systems used by the licensee for the provision of information to Q-COMP.	—	—	—	—	—	Licensees must inform Comcare as soon as practicable of court or tribunal proceedings in relation to a claim managed by a licensee under the SRC Act. The licensee must not make any submission to a court or tribunal in relation to the interpretation of a provision of the SRC Act that Comcare or the Commission requests the licensee not to	—

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
									make. Clause 18 of the licence conditions requires licensees to report certain workers' compensation and other data to Comcare on a regular basis.	
<b>More information</b>	—	—	—	—	—	—	—	—	—	—

Table 6.10: Requirements for surrendering a self-insurance licence and penalties for exiting the scheme

Requirements for surrendering a self-insurer licence	Penalties for exiting the scheme (and/ or moving to Comcare scheme)
<p><b>New South Wales</b></p> <p>WorkCover requires a written undertaking from the self-insurer to comply with WorkCover's licensing policy requirements as outlined in policy item 15 which states:</p> <p>a) should a self-insurer no longer hold a licence, it will still be held responsible for the management of the tail of claims incurred whilst licensed as a self-insurer, and</p> <p>b) the former licensee will be expected to manage and administer run off claims in a professional manner and continue to cooperate in the provision of claims data and other specified information to WorkCover.</p> <p>Security held by WorkCover and other guarantee arrangements will remain in force until WorkCover is satisfied that all claims have been discharged or adequately provided for pursuant to s216 of the <i>Workers Compensation Act 1987</i>. Legislation pursuant to s213 of the <i>Workers Compensation Act 1987</i> now allows WorkCover to require additional security from former self-insurers.</p>	<p><i>Workers Compensation Act 1987</i> — s208AA.</p> <p>WorkCover may require contributions to the Insurance Fund from exiting employers which includes an employer moving to Comcare.</p> <p>As an alternative to the making of a contribution to the Insurance Fund, the self-insurer may enter into an agreement with WorkCover to assume responsibility for the outstanding claim liabilities that would otherwise be payable by the licensed insurer who previously insured the employer.</p> <p>Extra charges: N/A.</p> <p>Time for payment: N/A.</p> <p>Specific review provisions: N/A.</p> <p>Penalties: N/A.</p>
<p><b>Victoria</b></p> <p><i>Accident Compensation Act 1985</i> — Sections 151, 151A, 151B, 151C, 151D and 151E.</p> <p>Where a self-insurer requests that their licence be revoked or approval is revoked, WorkSafe assumes the liability in respect of the tail claims. The former self-insurer must ensure all claims are given to WorkSafe and all new claims are lodged with WorkSafe. Where WorkSafe assumes liability for tail claims, the liability shall, within 28 days after being assumed by WorkSafe, be assessed by an actuary appointed by WorkSafe; or if the self-insurer fails to permit the actuary to inspect their books to enable that assessment to be made, be the amount determined by WorkSafe. If the self-insurer fails to pay the amount due within the period, WorkSafe may recover that amount under the guarantee.</p> <p>Where the liability of the self-insurer is assessed or determined, WorkSafe shall undertake an assessment of the tail claims liabilities at the end of each year for during the liability period. If the revised assessment at the end of the third year exceeds the initial assessment, the employer must pay the difference to WorkSafe. If the revised assessment is less than the initial, WorkSafe must pay the difference to the employer. This process will be repeated at the end of the 6 year liability period and if the revised assessment exceeds the assessment at the end of third year, the employer must pay the difference to WorkSafe. If the revised assessment is less, WorkSafe must pay the difference to the employer.</p>	<p><i>Accident Compensation Act 1985</i> — Part VIA.</p> <p>Application: Former premium payers and self insurers. Specific reference to exiting employers who join the Comcare scheme. Applies from 1 July 2005.</p> <p>Tail claims: Scheme assumes liability and seeks value of assessed tail claim liabilities from exiting employers. Actuarial assessment every year for 6 years by an actuary appointed by WorkSafe and employer must pay any assessed increase in the cost of tail claims at the end of the third and sixth year.</p> <p>Extra charges: Actuarial charges and any extra assessment if employer disputes the WorkSafe assessment.</p> <p>Time for payment: 28 days to pay tail claim liability.</p> <p>Specific review provisions: Employer may appoint its own actuary to review WorkSafe's final revised assessment of liability. Ability to seek judicial review at common law and actions under the <i>Administrative Law Act 1978</i> are excluded.</p> <p>Penalties: Interest payable on unpaid amounts as per the <i>Accident Compensation Act 1985</i>.</p>
<p><b>Queensland</b></p> <p><i>Workers' Compensation and Rehabilitation Act 2003</i> (s97) If the self-insurer does not intend to renew the licence, the self-insurer must advise the Authority of that fact at least 20 business days before the current licence period ends. If a self-insurer's licence is cancelled, the premium payable by the former self-insurer is to be calculated in the way prescribed under a regulation. (s98) The self-insurer must forward on to WorkCover all claims and related documentation for compensation and any claims that would have been lodged with the self-insurer are to be lodged with WorkCover (s99).</p> <p><b>Recovery of ongoing costs from former self-insurer (s101 <i>Workers' Compensation and Rehabilitation Act 2003</i>)</b></p> <p>If after the cancellation of a licence, WorkCover pays compensation or damages, or incurs management costs in managing claims for which a self-insurer is liable, this is a debt due to WorkCover by the self-insurer.</p> <p><b>Assessing liability after cancellation (s102 <i>Workers' Compensation and Rehabilitation Act 2003</i>)</b></p>	<p><i>Workers' Compensation and Rehabilitation Act 2003</i> — s105B.</p> <p>Application: Solely to former self insurers who join the Comcare scheme.</p> <p>Tail claims: The employer's State licence continues for 12 months after exit and they retain liability for tail claims. After 12 months, WorkCover takes over responsibility for pre-exit tail claims and seeks contribution from employer or authorises the employer to continue to manage and pay for these claims.</p> <p>Extra charges: Levy fee for 12 months, share of actuary charges, and share of any arbiter costs.</p> <p>Time for payment: Interim payment 12 months after exit date needs to be made within 20 business days of receiving written assessment from WorkCover (s105I).</p> <p>Four years following licence cancellation, WorkCover and the employer must each appoint an actuary to recalculate the amount of liability. The employer must pay WorkCover the difference between the interim payment and the recalculation amount, plus interest on the difference from the day the whole of the interim payment was made (<i>Workers' Compensation and Rehabilitation Regulation 2003</i> — s75Y and s75ZG).</p>



Requirements for surrendering a self-insurer licence		Penalties for exiting the scheme (and/ or moving to Comcare scheme)
	<p>WorkCover must appoint an actuary to assess the former self-insurer's liability. The amount of liability assessed and management costs are a debt due to WorkCover.</p> <p><b>Return of bank guarantee or cash deposit after cancellation (s103 Workers' Compensation and Rehabilitation Act 2003)</b></p> <p>When a self-insurer's licence is cancelled and they consider that all accrued, continuing, future and contingent liabilities have been discharged or adequately provided for, the self-insurer may, by written notice, ask the Authority to return the balance of the bank guarantee or cash deposit.</p>	<p>Specific review provisions: If WorkCover and the employer cannot agree on the recalculated amount they may refer to an arbiter.</p> <p>Penalties: No penalties specified for late payment.</p>
<b>Western Australia</b>	<p>An employer or group of employers that cease to be exempt is required to insure in accordance with s160 of the <i>Workers' Compensation and Injury Management Act 1981</i>. Where cancellation occurs, the bond will be held until all claims relevant to the period of self-insurance are satisfied.</p> <p><a href="#">Guidelines for the Approval and Review of Self-Insurers.</a></p>	No specific provisions.
<b>South Australia</b>	<p><b>Assumption of liabilities</b></p> <p>WorkCover must undertake the liabilities of any self-insured employer that ceases to be registered as a self-insured employer. Where WorkCover assumes the liabilities of a self-insured employer, either in whole or part, it is entitled to receive a payment from the employer equal to the capitalised value of all outstanding liabilities multiplied by that same prudential margin applied on calculating financial guarantees. WorkCover may recover the amount of liabilities undertaken by WorkCover either as a debt due to WorkCover or as a claim. s50 of the WRC Act. See 7.4 of <a href="#">Code of conduct for self-insurers under the work cover scheme (18 April 2013)</a>.</p> <p><b>Payment</b></p> <p>WorkCover may, at its discretion, give a self-insured employer whose registration is ceasing a choice as to whether to pay the capitalised sum from its own resources, or to have the financial guarantee provided during the period of self-insured employer registration paid to WorkCover. Any shortfall in the financial guarantee relative to the assessed value of the liabilities will be payable by the employer to WorkCover as a debt.</p> <p><b>Run off of claims</b></p> <p>Where WorkCover deems a run off to be appropriate or necessary in the circumstances, WorkCover may also determine that the former self-insured employer continues to exercise some or all of its delegated powers and discretions. If a former self-insured employer is permitted to run off its claims and continue to exercise its delegated powers and discretions, WorkCover may require the former self-insured employer to enter into an agreement with WorkCover. Upon cessation of the run off period WorkCover will appoint an Actuary to assess the value of the claims existing at that time in order to calculate the capitalised sum (if any) the employer must pay to WorkCover.</p> <p><b>Agreement</b></p> <p>In circumstances where WorkCover has decided not to undertake all of the liabilities of the former self-insured employer and to continue the delegation of powers and discretions to the former self-insured employer, WorkCover may require the former self-insured employer to enter into an agreement with WorkCover.</p>	WorkCoverSA no longer imposes a discontinuance fee or exit fee.

Requirements for surrendering a self-insurer licence		Penalties for exiting the scheme (and/ or moving to Comcare scheme)
<b>Tasmania</b>	Exit provisions are set out in the following Guideline. <a href="#">How to apply to cease being a permit holder (SI — 18).</a>	No specific provisions.
<b>Northern Territory</b>	Employer retains responsibility for run off of claims incurred during period of self-insurance.	No penalties.
<b>Australian Capital Territory</b>	Under s94 of the Workers Compensation Regulation 2002, the Minister may revoke or suspend a self-insurers exemption. This must be done in writing and is effective 7 days after notice has been given.	No specific provisions.
<b>C'wealth Comcare</b>	A licensee may request the Commission to revoke its licence at a date from which it no longer wishes to hold such a licence under the SRC Act.	N/A
<b>New Zealand</b>	ACC has the right to terminate in respect of: <ul style="list-style-type: none"> <li>• any insolvency event, or</li> <li>• a material breach</li> </ul> if the Accredited Employer no longer complies with the framework of the AC Act.	N/A

# Chapter 7: Scheme administrative and funding arrangements

This section provides background information on the administrative and funding arrangements under which the workers' compensation schemes operate. The key areas for comparison include scheme names, legislation, transitional arrangements and provisions for certain people who are injured in unique ways or at particular places or times.

This chapter includes:

- 7.1 Applicable workers' compensation legislation 2011–2012
- 7.2 Transitional provisions
- 7.3 Minor schemes
  - 7.3a New South Wales
  - 7.3b Victoria
  - 7.3c Western Australia
  - 7.3d South Australia
  - 7.3e Tasmania
  - 7.3f Commonwealth
  - 7.3g New Zealand
- 7.4 Scheme funding positions
- 7.5 Standard average premium rates
- 7.6 Selected industry premium rates

## Scheme administrative arrangements

Employers who operate in more than one Australian state or territory must comply with all relevant laws within each of the jurisdictions in which they work.

During the 2011–12 financial year workers' compensation schemes operated under separate laws in each jurisdiction, as shown in Table 7.1.

### Transitional provisions

Not all injured workers are covered under current workers' compensation legislation because their date of injury may have preceded the introduction of that legislation. However, most jurisdictions provide for workers' compensation payments to be made to people who would have had an entitlement to compensation under preceding legislation, or for some transitional arrangements to apply to those people.

For example, in Queensland injuries that occurred before 1 January 1991 are covered by the *Workers' Compensation Act 1916*, injuries that occurred between 1 January 1991 and 1 February 1997 are covered by the *Workers' Compensation Act 1990* and injuries that occurred on or after 1 February 1997 and before 1 July 2003 are covered by the *WorkCover Queensland Act 1996*.

In other circumstances an injured worker may need to meet certain criteria in order for an injury that occurred when previous legislation was in force to be covered under the current legislation. For example, a Commonwealth employee who was injured prior to 1988 would only be entitled to compensation under the SRC Act if there was an entitlement under the preceding pieces of legislation (see Table 7.2).

## Unique provisions and other workers' compensation schemes

A number of jurisdictions have specific workers' compensation or related legislation or other arrangements to provide for people who are injured in unique ways or at particular places or times. For example, the Commonwealth has an administrative scheme for people who may have been affected by nuclear radiation from British atomic tests in Australia in the 1950s. Table 7.3 lists the minor schemes extant in each jurisdiction. Tables 7.3a to 7.3g expand on the specific arrangements in each jurisdiction for the minor schemes.

Table 7.1: Applicable workers' compensation legislation

Applicable workers' compensation legislation	
<b>New South Wales</b>	<p><a href="#">Workers Compensation Act 1987</a>. Version valid from 1 October 2012. Historical versions can be accessed from the same link.</p> <p><a href="#">Workplace Injury Management and Workers Compensation Act 1998</a>. Version valid from 1 October 2012. Historical versions can be accessed from the same link.</p> <p><a href="#">Workers Compensation (Dust Diseases) Act 1942</a>. Version valid from 1 August 2012. Historical versions can be accessed from the same link.</p>
<b>Victoria</b>	<p><a href="#">Refer Victorian Law Today</a>. <a href="#">Accident Compensation Act 1985</a> — Version 190 is valid from 11 February 2013. <a href="#">Accident Compensation (WorkCover Insurance) Act 1993</a> — Version 50 is valid from 1 July 2011. Historical versions can also be accessed <a href="#">here</a>.</p>
<b>Queensland</b>	<p><a href="#">Workers' Compensation and Rehabilitation Act 2003</a> (permalink to current reprint). <a href="#">Workers' Compensation and Rehabilitation Regulation 2003</a> (permalink to current reprint). Superseded versions: <a href="#">Act Reg</a>.</p>
<b>Western Australia</b>	<p><a href="#">Workers' Compensation and Injury Management Act 1981</a> <a href="#">Version 10-g0 — 00 as at 14 Dec 2012</a> Other versions of this Act can be found <a href="#">here</a>.</p>
<b>South Australia</b>	<p><a href="#">Workers Rehabilitation and Compensation Act 1986</a>. (Version valid 1 Feb 2010 to 30 June 2012). (Version valid 1 Jan 2010 to 31 Jan 2010). (Version valid 15 Oct 2009 to 31 Dec 2009). (Version valid 1 July 2009 to 14 Oct 2009). <a href="#">WorkCover Corporation Act 1994</a>. (Version valid 1 Feb 2010 to 30 June 2012). (Version valid 1 Jan 2010 to 31 Jan 2010).</p>
<b>Tasmania</b>	<p><a href="#">Workers Rehabilitation and Compensation Act 1988</a> (Version valid 1 July 2010 to 4 Feb 2011). (Version valid 1 July 2009 to 30 June 2010). (Version valid 1 July 2010 onwards)</p> <p><a href="#">Workers' (Occupational Diseases) Relief Fund Act 1954</a> (No. 45 of 1954). (Version valid from 1 Jan 2004).</p>
<b>Northern Territory</b>	<p><a href="#">Workers Rehabilitation and Compensation Act</a>. <a href="#">Version Valid 1 January 2013</a>. Version valid 1 July 2012 to present. Version valid 1 Sept 2011 to 30 June 2012. Version valid 1 Feb 2011 to 1 September 2011. (Version valid 1 July 2010 to 1 Feb 2011). (Version valid 16 September 2009 to 30 June 2010). (Version valid 18 June 2009 to 15 September 2009).</p>

## Applicable workers' compensation legislation

<b>Australian Capital Territory</b>	<p><i>Workers Compensation Act 1951</i>  <a href="#">Republication No 55, 29 March 2012 — current 2012.</a>  <a href="#">(Republication No. 52, 21 September 2011 — 11 December 2011).</a>  <a href="#">(Republication No. 51, 13 September 2011 — 20 September 2011).</a>  <a href="#">(Republication No. 50, 1 July 2011 — 12 September 2011).</a>  <a href="#">(Republication No.49, Effective:1 December 2010 — 30 June 2011).</a>  <a href="#">(Republication No.48, Effective:30 Sept 2010 to 30 Nov 2010).</a>  <a href="#">(Republication No.47, Effective:10 July 2010 to 29 Sept 2010).</a>  <a href="#">(Republication No.46, Effective:1 July 2010 to 9 July 2010).</a>  <a href="#">(Republication No.45, Effective:31 Mar 2010 to 30 June 2010).</a>  <a href="#">(Republication No.44, Effective:17 Dec 2009 to 30 Mar 2010).</a>  <a href="#">(Republication No.43, Effective:22 Oct 2009 to 16 Dec 2009).</a>  <a href="#">(Republication No.42, Effective:1 Oct 2009 to 21 Oct 2009).</a>  <a href="#">(Republication No.41, Effective:3 Sept 2009 to 30 Sept 2009).</a>  <a href="#">(Republication No.40, Effective:2 July 2009 to 2 Sept 2009).</a>  <a href="#">(Republication No.39, Effective:8 April 2009 to 1 July 2009).</a></p>
<b>C'wealth Comcare</b>	<p><i>Safety, Rehabilitation and Compensation Act 1988.</i>  <a href="http://www.comlaw.gov.au/Details/C2012C00799">http://www.comlaw.gov.au/Details/C2012C00799.</a>  Version valid 18 December 2010 to 04 Jan 2011.  <a href="#">(Version valid 1 July 2010 to 17 Dec 2010).</a>  <a href="#">(Version valid 19 April 2010 to 30 June 2010).</a>  <a href="#">(Version valid 24 February 2010 to 18 April 2010).</a>  <a href="#">(Version valid 1 November 2009 to 23 February 2010).</a>  <a href="#">(Version valid 15 July 2009 to 31 October 2009).</a>  <a href="#">(Version valid 1 July 2009 to 14 July 2009).</a></p>
<b>C'wealth Seacare</b>	<p><i>Seafarers Rehabilitation and Compensation Act 1992.</i>  <a href="#">(Version valid 1 July to current).</a>  <a href="#">(version valid 27 December 2011 to 30 June 2012).</a>  <a href="#">(Version valid 7 December 2011 to 26 December 2011).</a>  <a href="#">(Version valid 8 February 2010 to 6 December 2011).</a>  <a href="#">(Version valid 15 July 2009 to 7 February 2010).</a>  <a href="#">(Version valid 5 June 2009 to 14 July 2009).</a></p>
<b>C'wealth DVA</b>	<p><a href="#">Military Rehabilitation and Compensation Act 2004.</a></p>
<b>New Zealand</b>	<p><i>Accident Compensation Act 2001 No 49 (current).</i>  <a href="#">(Version valid 1 April 2002 onwards).</a>  <i>Accident Compensation Amendment Act 2010 No 1.</i>  <a href="#">(Version valid 3 March 2010 onwards).</a>  <i>Injury Prevention, Rehabilitation, and Compensation Act 2001 No 49.</i>  <a href="#">(Was renamed Accident Compensation Act 2001 on 3 March 2010).</a></p>

Table 7.2: Transitional legislation provisions as at 30 September 2012

Transitional legislation provisions	
<b>New South Wales</b>	<a href="#">Workers Compensation Act 1987</a> — Schedule 6.
<b>Victoria</b>	<a href="#">Workers Compensation Act 1958</a> .
<b>Queensland</b>	<a href="#">Workers' Compensation Act 1916</a> . <a href="#">Workers' Compensation Act 1990</a> . <a href="#">WorkCover Queensland Act 1996</a> .
<b>Western Australia</b>	<a href="#">Workers' Compensation and Injury Management Act 1981</a> .
<b>South Australia</b>	The <i>Workers Compensation Act 1971</i> may still apply to injuries with a date of injury prior to 30 September 1987, the date on which the 1986 Act commenced.
<b>Tasmania</b>	<i>Workers Compensation Act 1927</i> (for injuries prior to 15 November 1988). <i>Workers' (Occupational Diseases) Relief Fund Act 1954</i> .
<b>Northern Territory</b>	Workmen's Compensation Ordinance 1949. <i>Workmen's Compensation Act 1979</i> .
<b>Australian Capital Territory</b>	The ACT legislation is a consolidation of previous enactments.
<b>C'wealth Comcare</b>	A person who has a date of injury under a previous Act (the 1971, 1930 or 1912 Acts) is entitled to compensation under the 1988 Act provided compensation for that injury would have been payable under the earlier Act. A person is not entitled to compensation under the 1988 Act if compensation was not payable in respect of an injury suffered under a previous Act.
<b>C'wealth Seacare</b>	A person who has a date of injury under the <i>Seamen's Compensation Act 1911</i> is entitled to compensation under the 1992 Act provided compensation for that injury would have been payable under the earlier Act. A person is not entitled to compensation under the 1992 Act if compensation was not payable in respect of an injury suffered under a previous Act. <a href="#">Seafarers Rehabilitation and Compensation (Transitional Provisions and Consequential Amendments) Act 1992</a> .
<b>C'wealth DVA</b>	<a href="#">Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004</a> .
<b>New Zealand</b>	<a href="#">Accident Insurance (Transitional Provisions) Act 2000</a> . <a href="#">Accident Insurance Act 1998</a> . <a href="#">Accident Rehabilitation and Compensation Insurance Act 1992</a> . <a href="#">Accident Compensation Act 1982</a> . <a href="#">Accident Compensation Act 1972</a> .

Table 7.3a: Minor schemes — New South Wales

	Administered by	Purpose	Coverage	Number covered	Basis for legislation
<b>Associated General Contractors Insurance Company Limited Act 1980</b>	WorkCover NSW.	To make provisions relating to claims against and liabilities incurred by Associated General Contractors Insurance Company Limited in respect of policies of insurance or indemnity under the <i>Workers' Compensation Act 1926</i> .	<i>Associated General Contractors Insurance Company Limited Act 1980</i> .	WorkCover NSW.	To make provisions relating to claims against and liabilities incurred by Associated General Contractors Insurance Company Limited in respect of policies of insurance or indemnity under the <i>Workers' Compensation Act 1926</i> .
<b>Workers' Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</b>	WorkCover NSW.	To continue the special compensation scheme for bush fire fighters, emergency service workers and rescue association workers.	Bush fire fighters, emergency service workers and rescue association workers.	155 407 Rural Fire Service, State Emergency Service and Surf Life Saving Association volunteers.	Unique Scheme.
<b>Workers' compensation (Dust Diseases) Act 1942</b>	<a href="#">Workers' Compensation Dust Diseases Board of NSW.</a>	This Act makes provisions regarding the payment of compensation in the case of workers who suffer death or disablement owing to a dust disease specified in Schedule 1 of the Act, including any pathological condition of the lungs, pleura or peritoneum, that is caused by dust that may also cause a disease so specified, to validate certain payments.	Any worker who has developed a 'dust disease' as defined in Schedule 1 of the Act from occupational exposure to dust as a worker in New South Wales.	As at 30 June 2012 compensation benefits are being provided to a total of 3886 clients: 1107 workers and 2779 dependants of deceased worker.	A system of no fault compensation for workers and their dependants where a worker suffers death or disability from dust diseases.
<b>Coal Industry Act 2001</b>	<a href="#">Coal Services.</a>	Providing occupational health and rehabilitation services for workers engaged in the coal industry, including providing preventative medical services, monitoring workers' health and investigating related health matters.	<i>Coal Industry Act 2001</i> .	<a href="#">Coal Services.</a>	Providing occupational health and rehabilitation services for workers engaged in the coal industry, including providing preventative medical services, monitoring workers' health and investigating related health matters.
<b>Treasury Managed Fund (TMF) (NSW Government's self-insurance scheme)</b>	<a href="#">NSW Self Insurance Corporation (SICorp).</a>	The TMF protects the insurable assets and liability exposures of all general government sector agencies and a number of state-owned corporations that have elected to join the scheme.  All general government agencies, other than electricity generators and suppliers, were required to consult with SICorp with a view to obtaining entry to the TMF for the 2013–14 fund year for all of their insurance fund requirements by 1 August 2012.	Workers' compensation as per NSW statute.	Employees of 154 member agencies (as at 30 June 2011).	Unique Scheme.



Table 7.3b: Minor schemes — Victoria

Administered by	Purpose	Coverage	Number covered	Basis for legislation
<p><b>Volunteers — recoupable claims</b></p>	<p>Claims by volunteers under the:</p> <ul style="list-style-type: none"> <li>• <i>Country Fire Authority Act 1958</i> are administered by the Country Fire Authority, and</li> <li>• <i>Police Assistance Compensation Act 1968</i> (PAC Act) are administered by the Police Department.</li> </ul> <p>Except for claims under the Acts above, WorkSafe Victoria administers claims of volunteers as an agent on behalf of the Crown.</p> <p>The claims agent responsible for managing claims for the Department of Justice manages claims by volunteers under the following Acts:</p> <ul style="list-style-type: none"> <li>• <i>Victorian State Emergency Services Act 1987</i> (applies to registered and casual emergency workers)</li> <li>• <i>Juries Act 2000</i> (applies to jurors), and</li> <li>• <i>Emergency Management Act 1986</i> (applies to casual emergency workers).</li> </ul> <p>The agent responsible for managing claims for the Department of Education manages claims by volunteers under the <i>Education Training and Reform Act 2006</i> (applies to volunteer school workers or volunteer student workers).</p> <p>WSV is reimbursed from the Consolidated Fund for any compensation payments made and the costs and expenses associated with administering these claims.</p>	<p>Under certain Acts, volunteers assisting Government Agencies are entitled to compensation in accordance with the <i>Accident Compensation Act 1985</i> if injured while carrying out specified duties.</p>	<p>Nominated volunteers specified under various pieces of legislation set out below. The term 'volunteers' includes people assisting government agents. Volunteers are not workers unless deemed so and are not entitled to compensation unless specified in one of the Acts of Parliament named.</p> <p>Workers assigned to emergency organisations by their employers as part of their contract of service remain workers of the employer. They will only be entitled to compensation as volunteers if they are covered by the aforementioned Acts.</p> <p>While carrying out the relevant duties volunteers in prisons and offenders working or participating in a correctional order or diversion program are entitled to compensation for personal injury if it would be payable under the Accident compensation Act if they were a worker employed by the Crown and the personal injury had arisen out of or in the course of employment.</p>	<p>Not known.</p> <p>The aforementioned Acts provide that volunteers and other persons assisting government agencies are entitled to compensation if injured while carrying out relevant duties. Go to <a href="#">Victorian Legislation and Parliamentary Documents</a>.</p>

Table 7.3c: Minor schemes — Western Australia

Administered by	Purpose	Coverage	Number covered	Basis for legislation
WorkCover WA	<p>This Act applies to a waterfront worker in respect of whom there is an entitlement to make a claim for a relevant injury under s33 of the Compensation Act, but in respect of whom it is not known who was the employer who last employed the waterfront worker in the employment to the nature of which the 'relevant injury' is, or was, due.</p> <p>'relevant injury' means:</p> <ul style="list-style-type: none"> <li>a) mesothelioma, or</li> <li>b) lung cancer, or</li> <li>c) that form of pneumoconiosis known as asbestosis.</li> </ul>	Waterfront workers, within the meaning of the Compensation Act, employed in or about a harbour or port area at a time when asbestos was being loaded or unloaded from a vessel or otherwise handled in that harbour or port area.	N/A	N/A
WorkCover WA	The Supplementation Fund provides for payments to injured workers in the event of the failure of an approved insurer.	The Supplementation Fund is administered by WorkCover WA and is funded through a levy on insurance premiums which is applied as and when required. No levy is currently in place.	N/A	N/A

Table 7.3d: Minor schemes — South Australia

	Administered by	Purpose	Coverage	Number covered	Basis for legislation
<b>Statutory reserve fund</b>	<a href="#">WorkCoverSA.</a>	<p>The Statutory Reserve Fund was established under the repealed <i>Workers Compensation Act 1971</i> and came into operation in 1980 against which claims relating to workers compensation liabilities could be made in the event of the insolvency of an insurance company or the insolvency of an uninsured employer. The Fund was re-established under Schedule 1, Clause 5 of the <i>Workers Rehabilitation and Compensation Act 1986</i>. The Fund forms a separate part of the Compensation Fund of the WorkCover Scheme.</p> <p>The Statutory Reserve Fund is required to meet any liability arising from a shortfall of the Insurance Assistance Fund.</p>	Statutory workers' compensation benefits and liabilities at common law in respect of injury prior to 4.00pm 30 September 1987.	N/A	To provide protection of injured workers arising under the <i>Workers Compensation Act 1971</i> in the event of the insolvency of an insurance company or an uninsured employer.
<b>Insurance assistance fund</b>	<a href="#">WorkCoverSA.</a>	<p>The Insurance Assistance Fund was established under Schedule 1 Clause 5A of the <i>Workers Rehabilitation and Compensation Act 1971</i>. The Fund supports policies issued under s118g of the repealed <i>Workers Compensation Act 1971</i>. A s118g policy relates to a policy of workers compensation insurance issued by the State Government Insurance Commission as insurer of last resort at a determined premium .</p>	Statutory workers' compensation benefits and liabilities at common law in respect of injury prior to 4.00pm 30 September 1987.	N/A	To provide assistance to an employer to meet its obligation to be insured under the repealed <i>Workers Compensation Act 1971</i> in cases where an employer was unable to obtain satisfactory workers compensation insurance from within the open insurance market.

Table 7.3e: Minor schemes — Tasmania

	Administered by	Purpose	Coverage	Number covered	Basis for legislation
<b>Workers' compensation Act 1927</b>	<a href="#">Department of Justice.</a>	This Act was the former workers' compensation legislation repealed in 1988. Some claims under this legislation are still outstanding; however, no new claims are permitted.	N/A	N/A	N/A
<b>Workers' (Occupational diseases) relief fund Act 1954</b>	<a href="#">Department of Justice.</a>	This Act contained specific provisions for certain occupational diseases that were relevant to employees working in particular industries, e.g. mining. Most provisions of the Act have been repealed and no new claims are permitted.	N/A	N/A	N/A
<b>Asbestos-related Diseases (Occupational Exposure) Compensation Act 2011</b>	<a href="#">Department of Justice.</a>	This Act establishes a scheme for the payment of compensation to workers who contract asbestos related diseases in the course of their employment.	Claimants who are or were workers as defined by the Act and who have suffered a compensable disease.	—	—

Table 7.3f: Minor schemes — Commonwealth

Administered by	Purpose	Coverage	Number covered	Basis for legislation
<b>Administrative scheme for the purposes of compensating persons present at British nuclear test sites in Australia</b>	<a href="#">Department of Education, Employment and Workplace Relations.</a>	To compensate those persons who can establish that they were in the region of the tests at the time of the testing, who sustained an injury or a disease which can be demonstrated to have arisen as a result of exposure to radiation, etc emanating from the British Nuclear Tests in the 1950s and 1960s. This scheme was formed by Executive Government in 1986.	Non-Commonwealth employees, pastoralists and indigenous persons who were present at or near the test sites at the time of the testing in the 1950's and early 1960's are covered under the scheme.	N/A  As there is no legislative basis to the scheme, any determination of a claim involves an exercise of the Government's executive power. There is no right of appeal, although claimants may seek common law redress against the Government. The scheme references Commonwealth workers' compensation legislation to determine the types and quantum of benefits paid under the scheme.
<b>Scheme for the payment of special compensation for injury in exceptional circumstances</b>	<a href="#">Department of Education, Employment and Workplace Relations.</a>	To compensate those persons (listed below) who suffer injuries or contract diseases, under exceptional circumstances, such as injuries which arise a result of actual or threatened acts of violence because the claimant was identified with the Australian Government. It also provides compensation for diseases contracted because of changes in the person's environment arising out of their connection with the Government, who would not have incurred such injuries or diseases but for the claimant's connection with the Australian Government — and for which they have no claim for compensation under a statutory scheme. This scheme was formed by Executive Government in 1986.	The Special Compensation Scheme provides compensation to Commonwealth government employees and/or their dependants, Commonwealth contractors, people undertaking actions at the direction of the Commonwealth and judges.	N/A  As there is no legislative basis to the scheme, any determination of a claim involves an exercise of the Government's executive power. There is no right of appeal although claimants may seek common law redress against the Government. The scheme references Commonwealth workers' compensation legislation to determine the types and quantum of benefits paid under the scheme.
<b>Asbestos related claims (management of Commonwealth liabilities) Act 2005</b>	<a href="#">Comcare.</a>	Manages the Commonwealth's asbestos-related claims liabilities for claims made outside the SRC and MRC Acts.	Claimants with asbestos-related conditions such as asbestosis, an asbestos-induced carcinoma, an asbestos-related non-malignant pleural disease, mesothelioma etc.	There are 41 open claims being managed at 10 January 2013.  A focal point for the Commonwealth to manage its asbestos liabilities.

<b>Veterans' Entitlements Act 1986</b>	<a href="#">Department of Veterans' Affairs.</a>	<p>Provides entitlements to compensation and rehabilitation for members and former members of the Australian Defence Force injured in the course of their duties.</p> <p>Injury, disease or death related to the following service:</p> <ul style="list-style-type: none"> <li>• peacetime service (after completion of three-year qualifying period) — from 7 December 1972 to 6 April 1994. Members who enlisted before 22 May 1986 and who served continuously until after 6 April 1994 are also covered for service after that date</li> <li>• all periods of operational service, peacekeeping service and hazardous service to 30 June 2004, and</li> <li>• war-like operations (for example in East Timor) and non war-like operations to 30 June 2004.</li> </ul>	<p>To be eligible for compensation payments under the VEA a person must first qualify as a 'veteran', a 'member of the Forces' or a 'member of a Peacekeeping Force'. Certain civilians also have access to the VEA.</p> <p>A member who had not completed the three-year qualifying period before 7 April 1994 is not covered under the VEA, unless he/she was medically discharged within that time.</p>	<p>301 449 as at September 2012.</p>	<p>Eligible veterans, serving and former defence force members, their war widows and widowers and dependants have access to: appropriate compensation and income support in recognition of the effects of war and defence service, and; to health and other care services that promote and maintain self-sufficiency, well-being and quality of life.</p>
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**Table 7.3g: Minor schemes — New Zealand**

	Administered by	Purpose	Coverage	Number covered	Basis for legislation
<b>Tuberculosis Act 1948</b>	<a href="#">Ministry of Health.</a>	<p>Make better provision for the treatment, care and assistance of persons suffering or having suffered from tuberculosis and for preventing the spread of tuberculosis.</p>	<p>Any person who is suffering from tuberculosis in an active form and who is likely to infect others. Can claim for workers' compensation if contracted during employment.</p>	<p>350–400 new cases a year.</p>	<p>N/A</p>

## **Scheme funding arrangements**

All workers' compensation schemes collect funds to meet liabilities and administer the scheme. There are three different types of scheme funding: centrally funded, hybrid and privately underwritten.

In centrally funded schemes, a single public insurer — a government agency, performs most, if not all of a workers' compensation insurer's functions. Central insurers are responsible for underwriting their scheme.

The management and operation of hybrid schemes involves both the public and private sector. Public central insurers are responsible for underwriting, funds management and premium setting. Other functions, such as claims management and rehabilitation are contracted out to private sector bodies, usually insurance companies with specialised expertise in injury management. Details of the contracted bodies in each jurisdiction are available from the jurisdiction's authorities.

In privately underwritten schemes, most, if not all insurer functions are provided by the private sector through approved insurance companies and self-insuring employers who meet the appropriate prudential and other prerequisites. This includes underwriting. In the NT scheme, a public insurer competes with private insurers for the provision of workers' compensation. The degree of regulation of privately underwritten schemes by government varies. Table 2.3 outlines the scheme funding arrangements in each jurisdiction.

### **Net funding ratio**

The net funding ratio is a net of outstanding claim liabilities and indicates the financial viability of a scheme. It measures the ratio of assets to outstanding claims liability and is generally expressed as a percentage. Where the ratio is over 100 percent, the scheme may be over funded, and where the ratio is below 100 percent the scheme may be under funded. For centrally funded and hybrid jurisdictions where there is a separate workers' compensation fund (centrally funded), the scheme's annual report identifies the assets set aside for future liabilities. For privately underwritten schemes assets are set aside to meet all liabilities.

### **Net assets**

Net assets in centrally funded schemes are the premiums collected and invested by each jurisdiction during a financial year minus any outstanding amount the scheme may recover from third parties. In hybrid schemes, net assets are the assets available to meet the insurer's net claims liability. In privately underwritten schemes, net assets are considered to be the insurers' overall balance sheet claims provisions. Net assets are used in the calculation of funding ratios.

### **Net liabilities**

Net liabilities in centrally funded schemes are the total current and non-current liabilities of the scheme minus any amounts the scheme expects to retrieve at the end of the financial year. In hybrid schemes, net liabilities are claim liabilities including the prudential margin and net of claims recoveries receivable. The liabilities in privately underwritten schemes are taken as the central estimate of outstanding claims for the scheme at the end of the financial year. Net liabilities are used in the calculation of funding ratios. Table 7.4 shows each jurisdiction's scheme funding position as reported in their annual reports.

**Table 7.4: Schemes' funding positions as at 30 June 2012 and 30 June 2011**

	30 June 2012	30 June 2011
<b>New South Wales</b>	Assets: \$14 564m. Liabilities: \$16 061m. Funding Ratio: 91%.	Assets: \$13 319m. Liabilities: \$15 682m. Funding Ratio: 85%.
<b>Victoria</b>	Assets: \$9829m. Liabilities: \$10 290m. Funding Ratio: 96%.	Assets: \$9662m. Liabilities: \$8991m. Funding Ratio: 108%.
<b>Queensland</b>	Assets: \$3410m. Liabilities: \$2869m. Funding Ratio: 119%.	Assets: \$3082m. Liabilities: \$2697m. Funding Ratio: 114%.
<b>Western Australia</b>	WA is a privately underwritten scheme, therefore this data is not available.	WA is a privately underwritten scheme, therefore this data is not available.
<b>South Australia</b>	Assets: \$1754m. Liabilities: \$2705m. Funding Ratio: 64.8%	Assets: \$2014m. Liabilities: \$3403m. Funding Ratio: 59.2%.
<b>Northern Territory</b>	Assets: \$245.2m. Liabilities: \$267.3m. Funding Ratio: 92%.	Assets: \$252.3m. Liabilities: \$248.2m. Funding Ratio: 101.6%.
<b>C'wealth Comcare</b>	Assets: \$1516m. Liabilities: \$1675m. Funding Ratio: 91%.	Assets: \$1465m. Liabilities: \$1411m. Funding Ratio: 104%.
<b>New Zealand<sup>1</sup></b>	Assets: NZ\$5692.4m. Liabilities: NZ\$4559.3m. Funding Ratio: 125%.	Assets: NZ\$5138.4m Liabilities: NZ\$4369.3m. Funding Ratio: 118%.

<sup>1</sup> Figures for 30 June 2011 include Residual claims.

Care should be taken when analysing the information above as the valuation of liabilities differs across jurisdictions. The [Comparative Performance Monitoring \(CPM\) report 14th Edition](#), attempts to address most of the areas where differences can occur.

## Premiums

Employers, other than self-insurers, are required to pay workers' compensation premiums to cover their workers in the event of a work related injury or illness. The majority of employers in Australia and New Zealand are premium payers. Premiums fund financial and medical support to injured workers, cover the costs of dispute management and administration of the schemes. In central and hybrid schemes, premium rates are set by a central authority based on actuarial forecasts of claim costs across all industry sectors. In privately underwritten schemes independent insurers charge premiums based on a commercial underwriting basis.

Premium rates are generally pooled across similar risk profile groups. This allows employers who share a common set of risks to spread the risk across their industry type. Across the schemes there are hundreds of specified premium rates for industry types.



Employers that operate in more than one jurisdiction have to pay the relevant premium in each jurisdiction.

Premiums are usually expressed as a percentage of employers' total wages bills. The rates depend on an employer's:

- size
- industry
- individual claims experience, and
- the way that 'wages' are defined for workers' compensation purposes, which can vary across the jurisdictions.

In 2010–11 the Australian standardised average premium rate was 1.49 percent of payroll, which was less than the previous year 2009–10 (1.54%).

Table 7.5 below shows the standardised average premium rate in each jurisdiction over the last five financial years as reported in the [CPM report 14th edition](#) (Indicator 15).

The standardised premium rates are determined by applying factors that adjust the total average premium rate for employer excess and journey claims in each jurisdiction. A full explanation of the methodology for producing standardised average premium rates is in Appendix 1 of the [CPM report](#).

**Table 7.5: Standardised average premium rates 2005–06 to 2010–11 (% of payroll)**

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory*	C'wealth Comcare	C'wealth Seacare	New Zealand
<b>2006–07</b>	2.13	1.60	1.15	1.68	2.85	1.77	1.81	2.93	1.21	5.54	0.94
<b>2007–08</b>	1.92	1.46	1.09	1.42	2.83	1.49	1.81	2.66	1.04	5.06	0.93
<b>2008–09</b>	1.83	1.38	1.06	1.28	2.79	1.38	1.77	2.28	0.91	3.90	0.86
<b>2009–10</b>	1.82	1.39	1.12	1.32	2.76	1.40	1.72	2.14	0.91	3.16	0.94
<b>2010–11</b>	1.76	1.35	1.22	1.14	2.49	1.50	1.79	2.05	0.92	3.49	1.06

\* ACT Private

Premiums vary from industry to industry. Table 7.6 provides an indication of some selected premium rates. Apart from Western Australia, Tasmania, the Northern Territory and the Australian Capital Territory, industry rates are not provided for jurisdictions with full private insurance underwriting, as each individual insurer sets their own industry rates. In the Comcare jurisdiction industry rates are not applicable as all employers are experience rated.

Further information on industry premium rates calculations are available for:

- New South Wales — [Insurance Premiums Order 2012–2013](#)
- Victoria — Industry descriptions are available in the periodical Victorian Government Gazette — [Premiums Order \(No. 20\) 2012/13 and Industry Rates in the special Victorian Government Gazette No. S278](#)
- Queensland — WorkCover Queensland Notice (No. 1) of 2012
- Western Australia — [The Gazetted industry premium rates for WA](#), and
- Australian Capital Territory — Australian Capital Territory — [ANZSIC estimated reasonable premium rates 2012–13 web release.pdf](#).

Table 7.6: Selected industry premium rates as at 30 September 2012 (% of payroll)

	New South Wales <sup>1</sup>	Victoria <sup>2</sup>	Queensland <sup>3</sup>	Western Australia <sup>4,7</sup>	South Australia <sup>5</sup>	Tasmania	New Zealand <sup>6</sup>
<b>Average levy/ premium rate</b>	1.68	1.298	1.45	1.691	2.75	2.28	1.15
<b>Highest published rate</b>	11.672	12.245	10.380 (Demolition).	6.96 (Carpentry Services).	7.50	9.72 (Meat processing).	6.91
<b>Highest experienced rate</b>	N/A	N/A	18.0	N/A	Transitional Provisions (Part 7 of the WorkCover Premium Order (Experience Rating System) 2012–13) cap an employer's premium rate at 125% of the employer's previous year's WorkCover levy rate i.e. 125% of 7.5% or 9.375%.	N/A	N/A
<b>Lowest published rate</b>	0.215	0.260	0.199	0.25	0.40	0.46	0.17
<b>Lowest experienced rate</b>	N/A	N/A	0.023	N/A	The Transitional Provisions (Part 7 of the WorkCover Premium Order (Experience Rating System) 2012–13) cap an employer's premium rate at 75% of the employer's previous year's WorkCover levy rate i.e. 75% of 0.4% or 0.3%.	N/A	N/A
<b>House construction</b>	5.040	1.683	2.849	1.20	2.90	3.97	2.55
<b>Non-residential construction</b>	3.928	2.038	2.963	2.15	2.90	3.55	2.52

	New South Wales <sup>1</sup>	Victoria <sup>2</sup>	Queensland <sup>3</sup>	Western Australia <sup>4,7</sup>	South Australia <sup>5</sup>	Tasmania	New Zealand <sup>6</sup>
<b>Meat products</b>	7.265 (Abattoirs). 7.591 (Meat packing and freezing). 7.252 (Meat processing).	7.201 (Meat Processing).	7.425 (Meat processing).	4.50 (Meat processing).	7.50	9.72 (Meat processing).	1.042 (Inspection). 3.66 (Processing). 1.49 (Wholesaling).
<b>Rubber products manufacturing</b>	6.009 (Rubber tyre manufacturing). 4.197 (Other rubber product manufacturing nec).	2.767 (Natural Rubber Product Manufacturing). 2.191 (Synthetic Resin And Synthetic Rubber Manufacturing). 5.339 (Tyre Manufacturing).	3.686	2.95 (Rubber tyre manufacturing).  3.02 (Rubber product manufacturing n.e.c.).	4.80 (Rubber tyre manufacturing).  4.60 (Rubber product manufacturing nec).	2.06 (Products). 2.06 (Tyre man).	0.81 (Natural rubber product manufacturing). 0.81 (Tyre manufacturing).
<b>Plastic products</b>	4.094 (Plastic product manufacturing).	3.491 (Rigid And Semi-Rigid Polymer Product Manufacturing). 2.862 (Other Polymer Product Manufacturing). 3.474 (Polymer Film And Sheet Packaging Material Manufacturing).	3.686 (Rigid and semi-rigid polymer product manufacturing).	2.36 (Plastic blow moulded product manufacturing).	5.20 (Rigid plastic sheeting manufacturing). 5.50 (Plastic products manufacturing NEC).	4.18 (Plastic blow moulded product manufacturing).	1.07 (Rigid and semi-rigid polymer product manufacturing).
<b>Basic iron and steel products</b>	4.607 (Basic iron and steel manufacturing).	4.164 (Iron Smelting And Steel Manufacturing).	3.421 (Iron smelting and steel manufacturing).	3.97	5.60	3.12	1.16 (Manufacturing).
<b>Steel casting</b>	4.482 (Iron and steel casting and forging).	6.251 (Iron And Steel Casting).	3.421 (Iron and steel casting and forging).	3.32 (Iron and steel casting and forging).	7.30	3.12 (Iron and steel casting and forging).	1.16 (Iron and steel casting and forging).
<b>Steel pipes and tubes</b>	4.483 (Steel pipes and tubes manufacturing).	1.291	3.421	2.88	3.80	3.12	1.16 (Manufacturing).
<b>Pulp paper and paperboard</b>	3.326 (Pulp paper and paperboard manufacturing).	2.005	2.931	4.30	6.50	1.10	0.62 (Manufacturing).
<b>Paints</b>	2.985 (Paint manufacturing).	2.045 (Paint And Coatings Manufacturing)	2.059 (Paint and coating manufacturing).	1.40 (Paint manufacturing).	3.50	4.18 (Paint manufacturing).	0.45 (Paint and coatings).

	New South Wales <sup>1</sup>	Victoria <sup>2</sup>	Queensland <sup>3</sup>	Western Australia <sup>4,7</sup>	South Australia <sup>5</sup>	Tasmania	New Zealand <sup>6</sup>
<b>Soap and detergents</b>	2.708 (Soap and other detergent manufacturing).	3.025 (Cleaning Compound Manufacturing).	2.059 (Cleaning compound manufacturing).	1.80	3.00	4.18	0.56 (Cleaning Compound).
<b>Glass and glass products</b>	4.516 (Glass and glass products manufacturing).	2.918	3.724	3.68	3.50	3.33	1.45 (Manufacturing).
<b>Cement</b>	2.851 (Cement and lime manufacturing).	2.594 (Cement And Lime Manufacturing).	2.379 (Cement and lime manufacturing).	3.16 (Cement and lime manufacturing).	5.80	2.69 (Cement and lime manufacturing).	1.45 (Cement and Lime Manufacturing).
<b>Clothing manufacturing</b>	4.110 (Men's and women's clothing manufacturing).	2.094	1.876	3.16	3.30	2.59	0.66
<b>Beer</b>	2.868 (Beer and malt manufacturing).	1.265	2.028	2.27	1.90	2.48 (Beer and malt manufacturing).	0.69 (Beer and malt manufacturing).
<b>Hotels</b>	2.831 (Pubs, taverns and bars).	2.040 (Accommodation).	2.498 (Accommodation). 2.100 (Pubs, taverns and bars).	1.86 (Pubs, taverns and bars).	3.60 (Accommodation).	1.95 (Pubs, taverns and bars).	0.84 (Accommodation).
<b>Bread manufacturing</b>	3.785	2.854 (Bread Manufacturing (Factory Based)).	4.111	4.89	7.40	2.48	1.24
<b>Footwear manufacturing</b>	4.265	4.226	1.876	2.82	3.70	2.59	0.6690
<b>Nursing homes</b>	5.055	3.304 (Aged Care Residential Services).	3.436 (Aged care residential services).	3.88	7.40 (Personal care services). 4.80 (Residential care services nec).	4.93	1.50 (Retirement village operation).
<b>Department stores</b>	2.080	1.536	1.659	3.08	2.00	2.16	0.48

	New South Wales <sup>1</sup>	Victoria <sup>2</sup>	Queensland <sup>3</sup>	Western Australia <sup>4,7</sup>	South Australia <sup>5</sup>	Tasmania	New Zealand <sup>6</sup>
<b>Medical practice</b>	0.566 (General practice medical services). 0.541 (Specialist medical services).	0.345 (General Practice Medical Services). 0.260 (Specialist Medical Services).	0.333 (General practice medical service).	0.61 (General practice medical services).	0.50	0.57 (General practice medical services).	0.09 (General practice medical services).
<b>Secondary schools — private</b>	0.771 (No distinction is made between private and government schools).	0.599	0.767 (Secondary education).	0.97 (No distinction is made between private and government schools).	1.10 (Secondary education).	0.88 (Secondary education — no distinction is made between private and government schools).	0.24 (Secondary education).
<b>Secondary schools — government</b>	0.771 (No distinction is made between private and government schools).	1.399	0.767 (Secondary education).	0.67 (No distinction is made between private and government schools).	1.10 (Secondary education).	0.88 (Secondary education).	0.24 (Secondary education).

1 New South Wales — Average levy/premium rate excludes GST and additional costs arising from The New Tax System. All industry premium rates quoted include GST.

2 Victoria — All rates exclude GST

3 Queensland — Published rates exclude stamp-duty and GST. Average premium rates include stamp-duty and exclude GST.

4 Western Australia — All published premium rates are exclusive of GST.

5 South Australia — All listed rates are exclusive of GST. All other listed rates include GST and The New Tax System effects.

6 New Zealand — All published levy rates are exclusive of GST and excludes residual levy.

7 WA at 1 Oct to reflect adjustments

## Premium setting: Notes relating to the industry rates comparison table

As it is difficult to make exact comparisons between the states and territories, the following qualifications should be noted:

- Industry classifications vary from jurisdiction to jurisdiction.
- On 1 July 2010, WorkCover Queensland moved from ANZSIC 1993 to ANZSIC 2006 to better reflect the evolution of technology and changes in industry during that period. [Current rates are published by Gazette notice.](#)
- On 30 June 2001, New South Wales introduced an industry classification system based on the ANZSIC system (WorkCover Industry Classification — WIC), with some alterations specifically designed for New South Wales. Current industry classes and rates were published in a New South Wales Gazette notice on 27 June 2012. Refer to the Insurance Premiums order on the WorkCover NSW website, [Insurance Premiums Order 2012–2013.](#)
- On 1 July 2011, Victoria introduced an industry classification system based on ANZSIC 2006 to better reflect the evolution of technology and changes in industry. Current rates are published by Gazette notice.
- In 2011, the Australian Capital Territory [published estimated reasonable premium rates.](#) These actuarially determined rates are released to the community and provided to the Approved Insurers who underwrite the Scheme to assist in the determination of premium rates for the coming year.
- Levy/Premium category comparisons are done on a ‘best match’ basis and should not be regarded as exact equivalents.

The number of self-insurers varies across the different jurisdictions. Both South Australia and New South Wales have large numbers of self-insurers, which means that the proportion of workers centrally covered by these schemes is lower than in some other jurisdictions. For the number of self-insurers in each jurisdiction see Table 6.1.

In some jurisdictions, particular industries traditionally have been excluded from the central system. For example, in New South Wales the coal industry is excluded.

Charges in addition to the workers’ compensation premium may be levied in some jurisdictions. An example is the Dust Diseases levy in New South Wales, which is levied on employers under the *Workers’ Compensation (Dust Diseases) Act 1942* to fund compensation to people who contract a dust disease including asbestosis and silicosis, and to their dependants. Employers engaged in the mining industry in New South Wales also pay a contribution to the Mine Safety Fund, established under the [Mine Safety \(Cost Recovery\) Act 2005](#). This contribution funds the mine safety activities of the New South Wales Department of Trade and Investment, Regional Infrastructure and Services. A work health and safety fee is additional to the levy (premium) payable in South Australia.

The maximum and minimum figures given for experience-rated premium rates represent the extent to which the published rate may be varied according to the various forms of experience rating based on claims rate in a given period. The following information should be noted relating to experience-rated premium rates.

- The experience rating in New South Wales is based on the size of the employer’s tariff premium and in Victoria it is based on the employer’s remuneration.
- The extent to which insurance companies may discount or load premiums according to experience may vary. For example, amendments to Western Australia’s legislation mean

that recommended premium rates can be surcharged up to 75 percent and with the WorkCover WA Authority's (Board) approval can be surcharged in excess of 75 percent. There are no limitations on discounting.

- Figures given for highest and lowest experience-rated premium rates should be treated with some caution. Those for South Australia represent actual maximums and minimums, and the lowest experience rate in Queensland represents theoretical limits that would only rarely be reached in practice.
- New Zealand applied an experience rating from 1 April 2011. WorkCover SA applied a mandatory experience rating system for medium and large employers and optional retro-paid loss arrangements for large employers from 1 July 2012.

### **Calculation of industry rates**

Each jurisdiction calculates its industry rates differently. Some calculate certain claims performance elements while some other jurisdictions also include current industry premium rates. The Northern Territory does not provide industry premium rates because the legislation gives insurers the power to set their own industry premium rates and these do not have to be gazetted. The information below outlines how each jurisdiction calculates their industry premium rates.

#### **New South Wales**

In 2012–2013 New South Wales had 538 industry classes. Rates are calculated by external actuaries using an objective data-based rating methodology based on recent wages declared and claims costs. An actuarial model is applied to small industry classes. The rates are calibrated to achieve the Scheme target collection rate.

#### **Victoria**

Each industry's rate is calculated based on claim cost rates and claim frequency rates over a five year period with 12 months of development. The rates are calibrated to achieve the average premium rate.

#### **Queensland**

There are currently 561 WorkCover Industry Classifications (WIC). Rates are calculated annually based on an actuarially verified methodology considering seven years of wages and claims data.

#### **Western Australia**

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:

- a calculation of relative premium rates
- examination of the adequacy of the declared outstanding claims reserves
- an 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 cost of claims, and



- a calculation of the implied uniform percentage variation in the relative premium rates to generate the required premium income.

### **South Australia**

In 2010–2011 South Australia had 512 industry classes. Industry rates are established to reflect the relative experience of each class by way of claim costs and recent wages declared from the experience of each industry using data-based rating methodology. Industry rates are reviewed annually by external actuaries. The rates are calibrated to achieve the average levy rate.

### **Tasmania**

WorkCover Tasmania is required to publish suggested premium rates for employers and licensed insurers. The objective is to ensure full funding, minimisation of cross subsidisation and increased transparency in the premium setting process. The actuarial analysis includes:

- analysis of claim numbers, claim frequency and claim size
- calculation of required premium pool
- examination of effect of legislative change
- analysis of economic assumptions and insurers expense and profit assumptions, and
- a comparison with insurer filed rates.

### **Australian Capital Territory**

The Australian Capital Territory releases estimated reasonable rates by ANZSIC class. These rates are determined annually according to independent actuarial analysis of claims and wages data provided by current and former approved insurers and self-insurers.

### **New Zealand**

In New Zealand there are 538 classification units and 143 levy risk groups. For each classification unit the levy relativities are compared by year for the last four years. As a result of this comparison (and taking into account such things as the impact of large claims, the number of years experience for a new classification unit, the volume of claims etc.), the classification unit will either stay within the same levy risk group or be moved to another.

The credibility-adjusted levy rate relativity of each levy risk group is the expected ultimate cost of claims expressed as a percentage of wages for the levy risk group, compared with the expected ultimate cost of claims as a percentage of wages for all levy risk groups. All the expected ultimate cost of claims and wage quantities used for this calculation are weighted averages of the most recent six years of experience. The levy rate relativities are credibility-adjusted (as required) to the self-insurers, then to the levy risk groups, then to the industry groups, and finally to the aggregate rate. The absolute level of the levy rates is set so that the expected costs of the Scheme will be met.

The classification unit levy rates shown are fully-funded levy rates.



# Appendix 1

## The Evolution of workers' compensation schemes in Australia and New Zealand

This section provides an historical overview of the development of workers' compensation schemes in Australia at both the national and jurisdictional level, and for New Zealand. In preparing this section, the following publications were used extensively: Kevin Purse, *The Evolution of workers' compensation policy in Australia*, 2005, from the Health Sociology Review; the CCH Workers' Compensation Guide, Volume 1; and the Productivity Commission's National Workers' Compensation and Occupational Health and Safety Frameworks report of 2004.

### The national perspective

There are 11 main workers' compensation systems in Australia. Each of the eight Australian states and territories has developed their own workers' compensation scheme and there are also three Commonwealth schemes: the first is for Australian Government employees, Australian Defence Force personnel with service before 1 July 2004 and the employees of licensed self insurers under the *SRC Act 1988*; the second is for certain seafarers under the *Seafarers Rehabilitation and Compensation Act 1992*; and the third is for Australian Defence Force personnel with service on or after 1 July 2004 under the *MRCA 2004*.

The origin of these Australian workers' compensation systems lies in nineteenth century British law. Before the implementation of workers' compensation arrangements an injured worker's only means of receiving compensation was to sue their employer for negligence at common law. However, workers rarely succeeded in these actions due to what has been described as the 'unholy trinity' of legal defences: common employment, voluntary assumption of risk and contributory negligence. To limit the application of those defences, the *Employment Liability Act 1880* was enacted in Britain. This Act was adopted in the Australian colonies between 1882 and 1895. While these Acts were well intentioned, taking them up did not lead to any significant improvement in outcomes for injured workers.

New workers' compensation laws incorporating a 'no-fault' principle came about after Federation in Australia. New laws were prompted by the failure of the *Employment Liability Act 1880* to improve conditions for injured workers, increasing industrialisation and the rise of the labour movement and popular support for state intervention on behalf of workers. To be eligible for workers' compensation under the no-fault principle, workers covered by the legislation merely had to prove that their injuries were work related. It was no longer necessary to prove negligence on the part of an employer. Nonetheless early no-fault coverage for workers' compensation was limited. Firstly, although laws provided for some benefits, the taking out of insurance by employers was not compulsory. Secondly, to be eligible for workers' compensation, an injury had to be found to have arisen out of and in the course of employment. In keeping with contemporary attitudes, the first workers' compensation laws in Australia were generally known as workmen's compensation and did not expressly cover female workers until challenged by the women's movement of the 1970s. Post-Federation growth in trade unionism and the rise of Labor governments led to a process of reforming those early workers' compensation arrangements, a process which for a variety of reasons was to continue in all

jurisdictions throughout the twentieth century. Coverage for workers' compensation gradually expanded to include most workers and lump sum payments for loss of body parts were introduced. By 1926 New South Wales had introduced compulsory insurance which became the model for most workers' compensation schemes around Australia.

Between the 1920s and 1970s incremental reforms took place across the jurisdictions. Eligibility continued to widen with the broadening of the definition of injury to "arising out of or in the course of employment". Reforms from the 1970s to the mid 1980s generally improved compensation benefits for workers. However, economic difficulties in the mid 1980s and early 1990s shifted the focus onto reducing the cost of workplace injuries, containing insurance premiums, underwriting arrangements and administrative efficiency.

In the last quarter of the twentieth century there was a shift in emphasis in the schemes to strengthen the role of work health and safety and to highlight the need for rehabilitation of injured workers. This shift was expected to place downward pressure on costs but did not achieve the level of success expected. Further reform attempts focussed on cutting back benefits and making premiums more competitive. By the mid 1990s, workers' compensation costs had fallen by 20 percent as a percentage of total labour costs, easing pressure for reform of premiums and costs, although each jurisdiction continues to grapple with these issues.

Since the introduction of the first workers' compensation laws, each jurisdiction has developed its own arrangements. This has resulted in numerous inconsistencies in the operation and application of workers' compensation laws. Some of the inconsistencies include scheme funding, common law access, level of entitlements, return to work and coverage. These inconsistencies can be attributed in part to the varying industry profiles and economic environments of each jurisdiction and judicial decisions that have led to legislative amendments. However, as businesses and workers become increasingly mobile, the need to understand the various workers' compensation systems at the national level is becoming increasingly important.

### **New South Wales (NSW)**

NSW introduced the *Workmens' Compensation Act 1910*. It applied to personal injury by accident arising in the course of employment, which was limited to defined 'dangerous occupations'. Compulsory insurance for employers and the first specialised workers' compensation tribunal in Australia, the Workers' Compensation Commission, were introduced in the *Workers' Compensation Act 1926*. This Act remained essentially unchanged until the mid 1980s.

The *Workers' Compensation Act 1987* repealed the 1926 Act and introduced a radically different scheme which included public underwriting of the scheme and removing the right of workers to make common law damages claims against their employers. In 1989 the *Workers' Compensation (Compensation Court Amendment) Act 1989* re-established common law rights and set out the role of the Compensation Court.

From 1987 to 1991 the workers' compensation scheme performed well and in the early 1990s premium levels were reduced and there were a number of legislative amendments that expanded the range and level of benefits. However, the previous surplus of almost \$1 billion quickly eroded and by mid 1996 there was a \$454 million deficit. The Grellman Inquiry of 1997 was initiated to address continuing financial problems. The inquiry recommended structural

changes including stakeholder management, accountability controls and greater incentives for injury management.

Changes in the period 2000–2005 continued to focus on greater competition and choice for employers, improved outcomes for injured workers and reducing the scheme’s deficit, which was eliminated in mid 2006.

The improved performance of the New South Wales WorkCover Scheme saw the target premium collection rate for NSW employers reduced by an average 30 percent between November 2005 and 2008. A 10 percent increase in lump sum compensation benefits for permanent impairment was also implemented for injuries received on or after 1 January 2007.

The structure of the Scheme also continued to evolve. In 2005 the Scheme transitioned from using insurers on open-ended licences to appointing Scheme Agents on commercial performance contracts for claims management and policy administration services that commenced on 1 January 2006. The contracts made Agents more accountable for delivering good Scheme outcomes and improved service standards.

From 30 June 2008 employers whose annual wages are \$7500 or less receive automatic coverage and are no longer required to hold workers’ compensation insurance, except where an employer engages an apprentice or trainee or is a member of a group of companies for workers’ compensation purposes.

In December 2008 the compensation available to families of workers who die as a result of a workplace injury or illness was increased for deaths occurring on or after 24 October 2007. The lump sum death benefit was increased from \$343 550 to \$425 000 (indexed). The changes also required payment of the lump sum to be made to a deceased worker’s estate where they leave no financial dependants. Previously only financial dependants were entitled to the lump sum payment.

An optional alternative premium calculation method for large employers based on commercial retro-paid loss premium arrangements was introduced from 30 June 2009. The retro-paid loss premium method derives an employer’s premium almost entirely from their individual claims experience and success in injury prevention and claims management during the period of the insurance policy. This provides a strong financial incentive for these employers to reduce the number and cost of workers’ compensation claims.

The existing seven WorkCover Scheme Agents entered into new five-year contracts commencing from 1 January 2010. The new contracts build on the contracts that have been in place since 2006 by more closely aligning the remuneration paid to Scheme Agents with their performance in key areas.

### **Recent Developments (New South Wales)**

The *Workers Compensation Legislation Amendment Act 2012* was passed with a suite of reforms commencing progressively from 19 June 2012. The reforms focus on early recovery and return to work and improving benefits for seriously injured workers with WPI of greater than 30 percent. A number of the reforms commenced with immediate effect on 19 June 2012 with respect to changes to entitlements for lump sum compensation, damages for nervous shock and pain and suffering, and journey claims. Seriously injured workers were transitioned to the new legislation on 17 September 2012. Amendments to weekly benefit entitlements for total

incapacity and partial incapacity and the introduction of work capacity assessments, along with the review of work capacity decisions, commenced in respect of new claims lodged on or after 1 October 2012. Existing claims that were lodged prior to 1 October 2012 will transition to the new legislation on 1 January 2013.

Refer to Chapter 1 for more detailed information on the June 2012 workers' compensation reforms in New South Wales.

## Victoria

Victoria introduced the *Workers' Compensation Act 1914* with benefits payable to workers arising "out of and in the course of" employment. The *Workers' Compensation Act 1946* changed to arising "out of or in the course" of employment. Major amendments were made in 1984 and the *Accident Compensation Act 1985* was introduced. The *Accident Compensation Act 1985* made sweeping changes to the system including public underwriting, vocational rehabilitation, work health and safety reforms and a new dispute resolution system.

The Act has been constantly updated with major reforms as follows:

1992

- restricting weekly benefits for workers with a partial work capacity
- introducing a non-adversarial dispute resolution system via conciliation
- establishing expert Medical Panels to determine medical questions
- limiting access to common law to seriously injured workers, and
- reinstating the right to sue for economic loss.

1993

- introducing the premium system.

1997

- removing access to common law
- significantly changing the structure of weekly benefits
- introducing impairment benefits to replace the Table of Maims, and
- restructuring death benefits.

2000

- reinstating access to common law damages for seriously injured workers with a new threshold for economic loss.

2004

- improving the efficiency of the claims process, and
- facilitating early and sustainable return to work.

2005

- making provision for previously injured workers whose employers exit the Victorian scheme to become licensed corporations under the Comcare scheme.

2006

- enhancing existing benefits including death benefits and the extension of the weekly benefits entitlement period from 104 to 130 weeks with increased payments for workers with a partial work capacity.

2007

- clarifying the financial guarantee requirements on employers who exit the Victorian WorkCover scheme (or Victorian self insurer arrangements) to self insure under the federal Comcare scheme
- mandating the return of the management of tail claim liabilities to the Victorian WorkCover Authority (WorkSafe Victoria) for Victorian self insurers who cease their self insurance arrangements under the Victorian scheme
- restoring the original approach to the assessment of permanent impairment for injured workers who suffer spinal injuries prior to the decision of the Full Court of the Supreme Court in *Mountain Pine Furniture Pty Ltd v Taylor*
- confirming that compulsory employer superannuation payments are not taken into account in the calculation of weekly benefit compensation
- improving counselling benefits for the families of deceased or seriously injured workers, and
- contributions towards the purchase price of a car where the current car is unsuitable for modification, home relocation costs and portable semi-detachable units in addition to car and home modifications.

2008

- preservation of the higher impairment rating regime for workers with musculoskeletal injuries assessed under Chapter 3 of the AMA Guides (4th edition) in place since 2003
- retrospective amendments to the Act to maintain the status quo regarding WorkSafe's recovery rights against negligent third parties that contribute to the compensation costs payable for a worker's injury, and
- workers with asbestos-related conditions can claim provisional damages and access expedited processes to bring on court proceedings quickly where the worker is at imminent risk of death.

2009

- on 17 June 2009 the Victorian Government responded to 151 recommendations made in a commissioned report following a review undertaken in 2008 by Mr Peter Hanks QC of the *Accident Compensation Act 1985* and associated legislation, and
- improvements to benefit both workers and employers and aimed at enhancing the scheme as a whole were introduced into Parliament in December 2009.

### **Recent Developments (Victoria)**

The *Accident Compensation Act Amendment Act 2010* was passed with the majority of the reforms commencing from 5 April 2010, except for new return to work rights and obligations commencing from 1 July 2010. The Act introduced the following changes:

- almost a doubling of lump sum death benefits, and improved access to pensions for dependants of deceased workers
- for injured workers who suffer a permanent impairment, the reforms provided:
  - a 10 percent increase in no-fault lump sum benefits for workers with spinal impairments
  - a 25 percent increase in the maximum impairment benefit, increasing no-fault lump sum benefits for the most profoundly injured workers, and
  - a five-fold increase in benefits awarded to workers who suffer a serious psychiatric impairment.
- for injured workers who receive weekly payments:

- an increase in the rate of compensation from 75 percent to 80 percent of income after workers have received compensation for 13 weeks
- a superannuation contribution for long term injured workers
- the extension of the inclusion of overtime and shift allowances from 26 weeks to 52 weeks when calculating a worker's weekly payments
- increasing the statutory maximum for weekly payments to twice the state average weekly earnings, and
- payment of limited further weekly payments for workers who have returned to work, but who require surgery for their work-related injury.

Other changes include:

- the replacement of prescriptive return to work requirements with a performance based regulatory framework from 1 July 2010 and the appointment of a Return to Work (RTW) Inspectorate with the power to enter workplaces and issues return to work improvement notices for any contravention by an employer of the return to work part of the Act
- greater accountability and transparency of decisions made by WorkSafe and its agents, including the right of employers to request written reasons for agents' claims decisions and to appeal premium determinations, and
- less red tape for employers and improved understanding and usability of the legislation by the removal or reform of anomalous, obsolete, inoperative or unclear provisions.

Further reforms were introduced in the latter half of 2010 with amendments to:

- streamline the provision that sets out the calculation of pre-injury average weekly earnings (PIAWE) and correct an anomaly in relation to the incorporation of commissions into PIAWE
- codify WorkSafe's current policies that relate to the impact on remuneration of salary packaging and injury prior to taking up a promotion, on the calculation of PIAWE
- restructure and streamline the provisions that govern the coverage of contractors
- align the value of impairment benefits for injured workers assessed at 71 percent WPI or above with the equivalent value of common law damages payable for pain and suffering on an ongoing basis
- introduce greater clarity and equity for dependants of deceased workers in relation to medical and like benefits, how earnings are calculated and how partial dependant partners of deceased workers are compensated
- improve the usability of provisions relating to medical expenses, and
- extend an existing provision in the Act to allow the making of a Governor in Council Order that would permit the introduction of a fixed costs model (FCM), with built-in increases linked to inflation, for plaintiff's legal costs in the litigated phase of serious injury applications.

## Queensland

Queensland's first workers' compensation legislation was the *Workers' Compensation Act 1905*. This limited scheme was repealed and replaced by the *Workers' Compensation Act 1916*, which became the foundation for workers' compensation until 1990. In the 1970s benefits were increased and a new Workers' Compensation Board was created.

By the late 1980s the legislation in Queensland had become outdated and unwieldy and a review resulted in the *Workers' Compensation Act 1990*. Key features included increased and additional benefits for workers, rehabilitation initiatives, increased employer and worker



representation on the Workers' Compensation Board, increased penalties for fraud and failure of employers to insure, and streamlined administrative arrangements.

In 1996 a further inquiry was held to address financial, regulatory and operational difficulties resulting in the *WorkCover Queensland Act 1996*. It repealed the 1990 Act and "effected a total rewrite of the workers' compensation legislation". In turn, the *Workers' Compensation and Rehabilitation Act 2003* repealed the 1996 Act and introduced separate delivery and regulation of the workers' compensation scheme.

## **Western Australia**

WA introduced the *Workers' Compensation Act 1902*. There were frequent and complex amendments over the next 79 years until the *Workers' Compensation and Assistance Act 1981* amended and consolidated the law. In 1991 the Act was renamed the *Workers' Compensation and Rehabilitation Act 1981*, reflecting a general shift of emphasis to rehabilitation.

A number of reviews and reports between 1999–2001 recommended changes and the Workers' Compensation Reform Bill 2004 introduced changes to statutory benefits, injury management, access to common law, employer incentives in relation to return to work for disabled workers, and fairness in dispute resolution. As part of the reforms the Act was renamed the *Workers' Compensation and Injury Management Act 1981* which reflects an emphasis on injury management within the workers' compensation scheme in Western Australia.

In 2009 a further review of the *Workers' Compensation and Injury Management Act 1981* was undertaken. Consequently, the first stage of legislative change saw the:

- removal of all aged based limits on workers' compensation entitlements
- extension of the safety net arrangement for workers awarded common law damages against uninsured employers, and
- inclusion of various amendments of an administrative nature (including the removal of time limit for writ lodgement after election and the incorporation of diffuse pleural fibrosis into the industrial disease provisions of the legislation).

The establishment of the Conciliation and Arbitration Service and other changes to the dispute resolution process commenced on 1 December 2011.

## **Recent Developments (Western Australia)**

The *Workers' Compensation and Injury Management Amendment Act 2012* and the supporting Workers' Compensation and Injury Management Amendment Regulations 2012 came into effect from 1 August 2012. These legislative changes clarify common law insurance requirements under the *Workers' Compensation and Injury Management Act 1981* (the Act) as a result of legal uncertainty over the scope of the insurance obligation introduced on 1 October 2011 by the *Workers' Compensation and Injury Management Amendment Act 2011*.

### ***Workers' Compensation and Injury Management Amendment (Jockeys) Act 2012***

Legislation to align the rate of weekly compensation paid to licensed jockeys with their pre-injury average weekly earnings on the same basis as other non-award workers under the *Workers' Compensation and Injury Management Act 1981* came into effect on 14 December 2012. The legislation also clarifies the scope of the workers' compensation insurance obligation between

Racing and Wagering Western Australia and licensed trainers regarding work done by jockeys for trainers at unlicensed facilities.

### ***Workers' Compensation and Injury Management Amendment Regulations (No.2) 2012***

The Amendment Regulations came into effect on 15 December 2012. The Amendment Regulations give effect to a small number of technical amendments which:

- accommodate the Australian Bureau of Statistics' (ABS) recent changes to reporting periods for Average Weekly Earnings which is used to set the cap on weekly workers' compensation benefits
- change regulation 44B (1) to accommodate the name change of the accreditation body for exercise physiologists, and
- make minor changes to regulated Forms 2D, 6, 16 and 17 from Appendix 1 of the Regulations.

### **South Australia**

South Australia introduced the *Workmens' Compensation Act 1900* which was consolidated in 1932 and remained essentially in that form until the introduction of the *Workers' Compensation Act 1971*. The 1971 Act completely restructured the workers' compensation legislation in the state. The Act increased the amounts of compensation payable and broadened the grounds for which a worker could gain compensation.

In June 1978 the Government established a Committee of Inquiry, chaired by D. E. Byrne, to examine and report on the most effective means of compensating those injured at work. In September 1980 the Committee released the report entitled 'A Workers' Rehabilitation and Compensation Board for South Australia — the key to rapid rehabilitation and equitable compensation for those injured at work (*Byrne Report*)'. Included amongst the Committee's recommendations was that a new Act be introduced repealing the *Workers' Compensation Act 1971*, that a Board be established to administer a workers' compensation scheme and that the Board be responsible for overseeing and confirming rehabilitation programs.

A Joint Committee was established to investigate those areas where employers and the unions were in agreement or disagreement with respect to changing the workers' compensation system. Essentially, the Joint Committee reviewed the Byrne Committee recommendations to determine which of those should be implemented. A joint agreement was reached that led to the drafting of new legislation that was considered by Parliament in 1986 and the establishment of WorkCover in September 1987.

Amendments to the *Workers' Rehabilitation and Compensation Act 1986* were made in 1992 (abolishment of common law), 1994 (compensability, redemptions, hearing loss), 1996 (dispute resolution, rehabilitation and return to work plans, two year reviews and more), and 2006 (territorial).

On 17 June 2008 the SA Parliament passed the most significant legislative amendments to the WorkCover Scheme since 1986. The amendments affected both the Act and the *WorkCover Corporation Act 1994*. The legislation followed an independent review by the South Australia Government to reassess the fundamental structure of the Scheme for the first time in 20 years. The review was undertaken by Alan Clayton and John Walsh. Their report was tabled in

Parliament in February 2008. The report recommended a package of legislative and non-legislative changes to the Scheme designed to ensure:

- injured workers would receive fair and equitable financial and other support that should be delivered efficiently and equitably and enable the earliest possible return to work
- the average levy rate (paid by employers) would be reduced and contained within the range of 2.25 percent and 2.75 percent by 1 July 2009, and
- the Scheme would be fully funded as soon as practicable.

The 2008 amendments were aimed at increasing return to work rates in South Australia, thereby minimising the negative impacts of injured workers remaining on the Scheme, enabling a reduction in levies paid by employers and ensuring full funding in the medium term. The legislative changes affected a number of areas with a varied implementation timetable. Changes include the introduction of work capacity assessments, Medical Panels, restrictions on redemptions and changes to weekly payments (commonly referred to as 'step-downs'). For more information about the changes and when they were implemented, see '[The WorkCover Scheme: A guide to the changes](#)'.

In 2008 WorkCover commenced a review of all regulations supporting the Act. All South Australian regulations expire after being 10 years in force (under the *Subordinate Legislation Act 1978*). In June 2010 Cabinet approved the [Workers Rehabilitation and Compensation Regulations 2010](#). The regulations were made by the Governor and published in the South Australian Government Gazette on 24 June 2010 and commenced on 1 November 2010. WorkCover produced '[A Guide to the Workers Rehabilitation and Compensation Regulations 2010](#)' to provide more detail on the changes at the time.

## **Recent Developments (South Australia)**

### ***Restrictions on redemptions***

As part of the 2008 reforms, legislative requirements were introduced from 1 July 2009 to restrict the use of redemptions. Redemptions are only to be considered where:

- the worker has returned to work but has an ongoing entitlement to a small top-up of \$30 per week or less and the redemption will remove the administrative cost of the claim remaining open for WorkCover and the worker
- the worker is 55 years of age or older and has no current work capacity, or
- exceptional circumstances apply where there is an overwhelming social interest in finalising the matter (as determined by the Workers' Compensation Tribunal).

Initially these changes only applied to claims with injuries on or after 1 July 2006, but from 1 July 2010 the restrictions have applied to all claims.

From 22 October 2010 the policy of the WorkCover Board is that there should be no income maintenance redemptions. Medical only redemptions of less than \$5000 are allowed, as are redemptions related to s54 recovery actions commenced prior to the new policy. The WorkCover Board considers the use of redemptions fosters a lump sum culture that discourages injured workers from remaining at or returning to work. This is supported by the findings of the 2007 Clayton-Walsh Review into the WorkCover Scheme. This policy does not apply to self-insured employers in the Scheme.

### ***Employer payment methods***

On 30 June 2010 WorkCover SA's 'Bonus/Penalty Scheme' (an experience rating system within the Scheme's levy framework) ended. While the WorkCover SA Board considered this scheme flawed, it supported WorkCover examining alternative options including those based on experience rating. Extensive stakeholder consultation commenced in October 2010. In December 2011, South Australian Parliament passed legislation making changes to the Scheme to establish a new premium payment system for employers from 1 July 2012.

The system provides medium and large South Australian employers with a premium allocation model that reflects their business activity, individual claims experience and size. By closely linking the amount employers pay to their industry experience and their own claims experience, the new approach is designed to encourage employers to focus on work health, safety and injury management practices. This should ultimately lead to better outcomes for workers, employers and the South Australian community.

The new approach consists of a mandatory Experience Rating System for medium and large employers registered with the Scheme and an optional Retro-Paid Loss Arrangement for large employers. Approximately 91 percent of employers in the South Australian Scheme are small employers and have not experienced any change in the way their premium has been calculated due to the introduction of Experience Rating.

Of those employers in the Experience Rating System, 65 percent (approximately 3300 employers) received a reduction in their premium and 35 percent (approximately 1800 employers) received a premium increase compared to what they would have paid if they had continued to be industry rated in the 2012–13 financial year.

The transitional protections in the Experience Rating System limit any premium increases or decreases for an employer to 75 percent and 125 percent of their previous year's premium rate. If an employer's premium has increased more than 25 percent on the previous financial year, it is either a result of an increase in the estimated remuneration that employer will be paying their employees or as a result of a change to their industry classification.

In line with the principles of the experience rating system, WorkCover is looking at options for a targeted employer initiative to support employers and/or industries to address issues with poor work health safety and return to work outcomes. More information about the new experience rating system is available on WorkCover's website at [www.workcover.com](http://www.workcover.com).

### ***Workplace Rehabilitation***

The increasing use of vocational rehabilitation services and no significant improvement in return to work outcomes for injured workers was identified as a concern for the WorkCover Board in mid 2010. PricewaterhouseCoopers were commissioned to assess the outcomes achieved by the use of vocational rehabilitation services in the current case management context. The March 2011 report highlighted a number of issues that were contributing to poor return to work outcomes. It also outlined a range of key interventions that could improve the experience and outcomes for individuals and overall Scheme performance. Following receipt of the report, the WorkCover Board approved a [schedule of activities](#) to address the key findings.

Nearly all scheduled activities for 2011 and 2012 have been completed or are in train.

## ***Scheme Review***

On 4 January 2011 the South Australian Government announced a review of the comprehensive 2008 legislative reforms as required by the *Workers' Rehabilitation and Compensation (Scheme Review) Amendment Act 2008* (the Amendment Act).

The Terms of Reference for the review required the Reviewer to assess:

- the impact of the Amendment Act on workers who have suffered compensable disabilities and been affected by the operation of the Amendment Act
- the impact of the Amendment Act on levies paid by employers under Part 5 of the *Workers Rehabilitation and Compensation Act 1986*, and
- the impact of the Amendment Act on the sufficiency of the Compensation Fund to meet the liabilities of the WorkCover Corporation of South Australia under the *Workers' Rehabilitation and Compensation Act 1986*.

The review (generally referred to as the Cossey Review) was undertaken by Mr Bill Cossey and Mr Chris Latham, with the report tabled in Parliament on 23 June 2011. The review found that overall it was too soon for the long term impacts of the 2008 amendments to be known. Emerging trends were identified where possible noting that trends were based on limited experience, limited data and it was unclear if they would prevail in the longer term.

## **Tasmania**

Tasmania first introduced workers' compensation in 1910. The *Workers' Compensation Act 1927* repealed earlier Acts and introduced compulsory insurance against injury to workers. A 1986 Tasmanian Law Reform Commission report recommended sweeping changes to the system and led to the *Workers' Rehabilitation and Compensation Act 1988*. This Act introduced many new features to the Tasmanian workers' compensation scheme, including:

- the establishment of the Workers' Compensation Board which included representatives of employers, employees, insurers and the medical profession
- extension of coverage to police officers, ministers of religion and sportsmen (restricted)
- revision of payment of the costs of treatment, counselling, retraining or necessary modifications to an injured worker's home or workplace, and
- licensing of insurers and self-insurers.

### **1995 amendments**

During 1995 amendments were made to strengthen the rehabilitation and return to work aspects of the Act, including a requirement for:

- an employer to hold an injured worker's pre-injury position open for 12 months
- an employer to provide suitable alternative duties to an injured worker for a period of 12 months
- a return to work plan to be developed if a worker is incapacitated for more than 14 days, and
- an employer with more than 20 employees to have a rehabilitation policy.

The amendments also removed a worker's right to compensation on the journey to and from work (in most circumstances) and introduced the first step-down provisions in relation to weekly benefits.

## 2000 amendments

In response to rising costs and concerns from unions and other groups about the fairness of the scheme, a Joint Select Committee of Inquiry into the Tasmanian workers' compensation system was initiated. Its 1998 report recommended significant changes to the workers' compensation system and resulted in the establishment of the new WorkCover Tasmania Board. Many of the recommendations of this Report were incorporated into the Workers' Rehabilitation and Compensation Amendment Bill 2000 including:

- access to common law being restricted to those workers who had suffered a WPI of 30 percent or more
- replacing the monetary cap on weekly payments with a 10 year limit
- without prejudice commencement of weekly payments to injured workers on receipt of a workers' compensation claim form and medical certificate
- an increase in the level of benefits to the dependants of deceased workers, and
- increases in the levels of step-downs in weekly payments.

## 2004 amendments

In 2003 the Government initiated a review to investigate concerns that the step-downs in weekly benefits were causing hardship for some workers. The Rutherford Report was completed in March 2004 and contained a number of recommendations for both the government and the WorkCover Tasmania Board. As a result of Rutherford's report, the legislation was amended to retain the first step-down provision of 85 percent of NWE but increase its duration to 78 weeks and reduce the impact of the second step-down from 70 percent to 80 percent of NWE. To offset the additional cost to employers of this change, the maximum period of entitlement was reduced from 10 to nine years. The time limit for deciding initial liability was also increased from 28 days to 12 weeks.

## 2007 amendments

In 2007 Parliament passed the *Workers' Rehabilitation and Compensation Amendment Act 2007*. The aim of this Act was to make the system fairer and provide greater certainty for all parties. The key changes included:

- improved compensation for industrial deafness. In the past some workers were unable to establish a claim for industrial deafness because their employer had failed to conduct baseline audiometric testing — the amendments rectified this
- a fairer method of calculating the rate of weekly compensation, especially for workers who have a short employment history and where the award does not include an 'ordinary-time rate of pay'
- workers' compensation coverage for jockeys
- amendments to address a Supreme Court decision that limited the ability of employers to recover compensation costs from a negligent third party
- clarification of coverage of luxury hire car drivers and consolidation of provisions relating to taxi drivers
- amendments to the work-relatedness test for injury from 'arising out of and in the course of' to 'arising out of or in the course of', so it is clear that injuries can be compensable even when symptoms only become apparent after the worker has left the relevant employment (however, to be compensable all injuries and diseases must be caused by work), and

- measures to better deal with disputes between insurers or disputes between employers.

### ***WorkCover Tasmania Board Return to Work and Injury Management Model***

In late 2004 the WorkCover Tasmania Board commenced a project to develop an injury management model for the Tasmanian workers' compensation system. The model was endorsed by the Board in 2007 with some minor amendments made in 2008.

In July 2006 the Minister released terms of reference for a review of the workers' compensation system. Alan Clayton was appointed to conduct this review. The terms of reference were focussed on the adequacy of compensation for workers who could not establish negligence or meet the 30 percent WPI threshold.

The report (Clayton Report) was released for public comment in January 2008 and included a number of recommendations for improving the level of compensation payable to more seriously injured workers. The major recommendations were:

- In order to encourage early reporting, there be a rebate of the employer excess to employers who report claims to their insurer within 48 hours of the receipt of the claim by the employer.
- Payment of a lump sum made in redemption or settlement of a worker's entitlement to compensation and/or in settlement of a worker's entitlement to damages in respect of any civil liability in the employer shall not be made unless the Tribunal has approved the payment/settlement. The Tribunal may approve a lump sum settlement if it is satisfied that all reasonable return to work rehabilitation and retraining options have been exhausted.
- Costing of three alternative weekly benefit extension options. First, an extension of weekly payments to age of retirement. Secondly, a model that involves an extension of the benefit duration limit to 12 years for workers with a WPI of between 15 percent and 19 percent; to 20 years for workers with a WPI of between 21 percent and 29 percent and until age of retirement for workers with a WPI of 30 percent or greater. Thirdly, vesting a discretion in the Workers Rehabilitation and Compensation Tribunal to extend payments beyond the existing circumstances for persons with a WPI of 15 percent or greater in cases of demonstrated need.
- Services encompassed under 'medical and other services' in s74 of the WRCA include the recognition of 'counselling services' to the family members of a worker who suffers a work-related fatality.
- Discretion be vested in the Workers Rehabilitation and Compensation Tribunal to extend medical payments beyond 10 years for persons with a WPI of 15 percent or greater in cases of demonstrated need.
- Lump sum death benefit (now \$208 370.61) be increased to \$250 000.00.
- Weekly benefit for dependant children (now 10 percent of the Basic Salary — \$56.47 per week) be increased to 15 percent of the Basic Salary (\$84.70 per week).
- Maximum impairment benefit lump sum (which is linked to the death benefit lump sum) be raised to \$250 000.00.
- WorkCover Tasmania Board undertake a review as to whether there should be a move from the current 4th edition of the AMA Guides to the Evaluation of Permanent Impairment.
- Consideration be given to the introduction of a narrative test of 'serious injury' to facilitate alternative access to common law damages for seriously injured and ill workers. That the regime for 'serious injury' set out in s134AB of the *Accident Compensation Act 1985* (Vic) be considered as the model for this purpose.

In July 2008 the Minister released two actuarial reports on the cost of the proposals and conducted further consultation on the report's recommendations.

The Clayton Report endorsed the Return to Work and Injury Management Model as the guiding framework for the achievement of optimal return to work outcomes.

WorkCover Tasmania, in conjunction with Workplace Standards Tasmania, is progressing an implementation plan consisting of five key elements:

- development of the legislative framework
- new licence and permit conditions for insurers and self-insurers
- review of WorkCover systems
- education and promotion of the Model, and
- review of data and monitoring systems.

### **2009 amendments**

The *Workers' Rehabilitation and Compensation Amendment Act 2009* was passed by Parliament in late 2009 and commenced on 1 July 2010. The amendments had four main purposes:

1. to implement the Government's response to the Clayton Report
2. to establish the legal framework for the WorkCover Return to Work and Injury Management Model
3. to amend the timing and level of weekly payment step-downs, and
4. to reduce the common law threshold from 30 percent WPI to 20 percent.

The amendments:

- introduced a statement of scheme goals
- encourage early reporting by holding the employer liable for claims expenses until the claim is reported
- provide for the payment of counselling services for families of deceased workers
- provide for the payment of medical and other expenses for up to 12 months after a worker ceases to be entitled to weekly compensation (with the possibility of extension on application to the Tribunal)
- increase the maximum lump sum payable to a dependant on the death of a worker to \$266 376.05 (indexed annually)
- increase weekly payments payable to a dependant child of a deceased worker from 10 percent basic salary to 15 percent basic salary
- increase the maximum lump sum payable for permanent impairment to \$266 376.05 (indexed annually)
- provide for the extension of weekly payments from nine years to 12 years for workers with a WPI between 15 percent and 19 percent; to 20 years for workers with a WPI of between 20 percent and 29 percent and until the age of retirement for workers with a WPI of 30 percent or more
- amend the first step-down to 90 percent of NWE rather than 85 percent of NWE
- delay the operation of the first step-down, so that it comes into effect at 26 weeks of incapacity rather than 13 weeks
- provide that the step-downs are not to apply where a worker has returned to work for at least 50 percent of his or her pre-injury hours or duties



- provide that the step-downs are to be discounted in circumstances where an employer refuses or is unable to provide suitable alternative duties
- reduce the threshold for access to common law damages from 30 percent WPI to 20 percent WPI, and
- repeal s138AB requiring a worker to make an election to pursue common law damages.

The amendments also included a range of measures that support the WorkCover Return to Work and Injury Management Model including:

- requirements for return to work and injury management plans
- obligations on employers to encourage early reporting of injuries and claims
- providing an entitlement to the payment of limited medical costs before the claim is accepted, and
- introduction of an injury management coordinator to oversee the injury management process.

### **Workers Rehabilitation and Compensation Amendment (Validation) Act 2012**

The *Workers' Rehabilitation and Compensation Amendment (Validation) Act 2012* (the 2012 Validation Act) commenced on 30 August 2012. It amended the *Workers' Rehabilitation and Compensation Act 1988* (the Act) to remove any doubts about the validity of versions 2 and 3 of the Guidelines for the Assessment of Permanent Impairment (the Guidelines). The amendments also clarified that version 2 of the Guidelines took effect on and from 1 April 2011 to 30 September 2012 and version 3 of the Guidelines took effect on and from 1 October 2011. The Guidelines are used to assess the degree of WPI under both the Act and the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*. Both Acts provide lump sum compensation based on the percentage of impairment. Under the Act the level of impairment is also relevant in relation to weekly compensation and for access to common law damages.

### **Northern Territory**

The first workers' compensation statute introduced in the Northern Territory was the *Workmens' Compensation Act 1920*. Before then, the *Employer's Liability Act 1884* applied. In 1985 the name of the Act was changed to the *Workers' Compensation Act*.

A review of the legislation in 1984 resulted in the *Work Health Act 1986*, which contained provisions for both work health and safety and workers' compensation. This Act provided for a scheme which is privately underwritten, featured pension based benefits and promotes rehabilitation and an early return to work. There is no access to common law for injured workers.

### **Cross-Border Amendments**

'Cross border' amendments to the *Work Health Act* commenced on 26 April 2007 so employers are only required to maintain a workers' compensation policy in the Northern Territory when they employ workers with a 'State of Connection' to the Northern Territory. The new cross border arrangements reduce red tape for employers and make it easier to do business by removing the need for the majority of employers to obtain multiple workers' compensation policies for workers who are temporarily working interstate. All the other Australian states and territories have introduced cross border provisions that allow workers to work across their

borders for temporary periods, under an existing Northern Territory workers' compensation policy.

### **2007**

In December 2007 the Legislative Assembly passed the *Workplace Health and Safety Act and the Law Reform (Work Health) Amendment Act*. These Acts separated the work health and safety and rehabilitation and workers' compensation provisions of the previous *Work Health Act* into the new *Workplace Health and Safety Act* and the *Workers' Rehabilitation and Compensation Act*. The rehabilitation and workers' compensation provisions of the *Work Health Act* were transferred almost unchanged into the new *Workers' Rehabilitation and Compensation Act*.

### **2008**

A series of other amendments to the *Work Health Act* occurred during 2007 and took effect on 1 July 2008 as parts of the *Workers' Rehabilitation and Compensation Act* commenced. The amendments relate to three areas:

- prescribed volunteers are no longer eligible for compensation for life, but instead will now be eligible for compensation similar to that provided to other injured workers
- if an employer/insurer defers a decision on liability but fails to make a decision to accept or dispute liability within the prescribed timeframe (56 days), then the employer/insurer is deemed to have accepted the claim until 14 days after the day on which the employer notifies the claimant of a decision to accept or dispute liability
- parties are now required to provide all written medical reports and other specified written material relating to the disputed matters to Northern Territory WorkSafe so they can be considered by the parties and mediator prior to the mediation process. The mediation process must now be completed within 21 days instead of 28 days, and
- GIO became an approved insurer pursuant to s121(1) of the *Work Health Act* on 30 June 2008, bringing the total number of approved insurers in the jurisdiction to five.

### **Recent developments Northern Territory**

The Workers' Rehabilitation and Compensation Legislation Amendment Bill 2011 was passed in Parliament on 28 March 2012. The amendments commenced on 1 July 2012 and are:

- the definition of 'worker' was amended to remove the reference to the Australian Business Number (ABN) and to apply the 'Results Test' so that:

A person performing work for another person will be a worker **unless**, in relation to the work, the following tests apply:

- (i) The person is paid to achieve a stated outcome; and
- (ii) The person has to supply the plant and equipment or tools of trade needed to carry out the work; and
- (iii) The person is, or would be, liable for the cost of rectifying any defect in the work carried out.

The new laws also provide that a person will not be considered a 'worker' for workers' compensation purposes where there is a personal services business determination in effect for the person performing the work under the *Income Tax Assessment Act 1997* (Cth).

- Section 65B of the Act was amended to allow access to compensation by workers injured in Australia but who reside overseas. The change will provide for weekly payments to continue if an injured worker is living outside Australia. The key elements of the change are as follows:
  - For weekly compensation payments to continue the injured worker must, at not less than 3 month intervals, provide proof of identity and proof of ongoing incapacity.
  - The duration of compensation payments will be a maximum of 104 weeks from when the worker starts living outside Australia.
  - Flexibility will exist for applications to be made to the Work Health Court for payments beyond 104 weeks if the worker is permanently and totally incapacitated, or exceptional circumstances apply. However, any such extension by the Court must be a single period that does not exceed 104 weeks.
- Section 65 of the Act was amended to provide immediate and fairer access to compensation for older workers who are injured and to reflect the Australian Government's decision to increase the qualifying age for the aged pension.
  - The new legislation establishes a link to the qualifying age for the age pension under the *Social Security Act*. This will mean that the age limit in the *Workers' Rehabilitation and Compensation Act* will increase in stages between 2017 and 2023 in line with the increase in the pension age.
  - In addition, the legislation establishes a transitional benefit for workers who sustain a work injury after 1/7/2012 and who at the time of injury are 63 years of age or over. These workers will be entitled to weekly compensation for a maximum period of 104 weeks or until the worker attains 67 years of age, whichever occurs first.
  - It should be noted that workers who are older than 67 years when they are injured, will be entitled to weekly compensation for up to 26 weeks (no change from the past situation).
- Section 49 of the Act was amended to provide certainty of the types of non-cash benefits that can be taken into account in calculating the worker's NWE for the purposes of payment of weekly compensation. These are limited to accommodation, meals and electricity.
- Section 89 of the Act was amended to bring the interest rate payable on late payments of weekly compensation in line with the interest rate applicable to Supreme Court judgment debts.
- Section 116 of the Act was amended to provide specific power of the Supreme Court to remit matters back to the Work Health Court in appropriate circumstances.

### **Australian Capital Territory**

In 1951 the Australian Capital Territory introduced the Workmens' Compensation Ordinance 1951 to repeal the original 1946 Ordinance. With the advent of self-government in the Territory on 11 May 1989, the 1951 Ordinance became the *Workmens' Compensation Act 1951* and from 22 January 1992 it became the *Workers' Compensation Act 1951*. Significant amendments were made by the *Workers' Compensation (Amendment) Act 1991* to the *Workers' Compensation Act 1951*, following reviews of the system in 1984, 1987 and 1990.

The *Workers Compensation Act* was significantly amended in 2002 to create a workers' compensation scheme based upon the principles of early rehabilitation and return to safe and durable work for injured workers. The *Workers Compensation Amendment Act 2001* introduced a number of new elements to ensure that employers, insurers, treatment providers, and the

injured worker were equally obliged to participate in personal injury plans, claims were dealt with expediently and statutory benefits were aligned with the Scheme's return to work goals.

An advisory committee to the responsible Minister was also established to look at the ongoing operation of the scheme and regulations. In 2006 further amendments were made to the *Workers' Compensation Act 1951* to allow certain categories of carers to be deemed as 'workers' under the Act and to create a Default Insurance Fund, which superseded the previous Nominal Insurer and Supplementation Fund.

Other inconsequential amendments have been made through the Justice and Community Safety Legislation Amendment Act 2006 and the *Statute Law Amendment Act 2007 (no 2)*. Also, for infringement notice offences under the Act, see the Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006.

During 2007 a review of the Scheme was conducted. The purpose of the review was to evaluate the success of the earlier reforms and identify the Scheme's ongoing cost drivers. The Review team made over 50 recommendations for improvement to the Australian Capital Territory Scheme consistent with the objectives underpinning the earlier reform.

### **Recent Developments (Australian Capital Territory)**

During 2009 a range of legislative improvements were introduced to the Australian Capital Territory Scheme that are intended to achieve the objectives of the 2007 Review. The *Workers Compensation (Default Insurance Fund) Amendment 2009* was passed by the Australian Capital Territory Legislative Assembly in August 2009 and it amends the *Workers' Compensation Act 1951* to bring the Default Insurance Fund Manager's powers into line with those exercised by all private sector workers' compensation insurers in the Australian Capital Territory.

The *Workers' Compensation (Default Insurance Fund) Amendment Act 2009 (No 2)* was passed by the ACT Legislative Assembly on 15 October 2009. The *Workers' Compensation (Default Insurance Fund) Bill 2009 (No 2)* restores the Uninsured Employer Arm of the Fund to its original statutory purpose and introduces a revised funding arrangement for the Fund which will align the operations of the Fund with standard insurance practices.

The *Workers' Compensation Amendment Act 2009* was passed by the Australian Capital Territory Legislative Assembly on 10 December 2009. The purpose of the amending legislation is threefold:

- to reduce red tape and administration costs and streamline business requirements associated with the Australian Capital Territory private sector workers' compensation scheme (the Australian Capital Territory Scheme)
- to implement the National Framework for the Approval of Workplace Rehabilitation Providers (the Framework) developed by HWCA, and
- to strengthen the existing compliance framework by introducing new offences for sustained non-compliance that scale the penalties to be commensurate with an employer's operational size.

The amendments also clarify the broad definition of worker, thereby limiting the opportunity for premium avoiding and sham contracting.

The *Workers' Compensation Amendment (Default Insurance Fund) Act 2010* commenced on 30 March 2010 and amends the membership and clarifies the role of the Default Insurance Fund Advisory Committee. Note: Workers employed by the ACT Government are covered by the Commonwealth's *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

The Workers' Compensation Amendment Regulation 2011 amendments commenced from 1 September 2011 and refine the financial and compliance audit requirements for insurers and self insurers.

## **The Commonwealth**

In 1912 the Commonwealth introduced the *Commonwealth Workmens' Compensation Act 1912* to provide compensation for Commonwealth workers. Before then compensation was paid to widows and orphans of deceased Commonwealth officers under the *Officers' Compensation Acts of 1908, 1909 and 1912* via determinations of Parliament.

In 1930 the *Commonwealth Workers' Compensation Act 1930* was enacted and provided a more extensive system of compensation for Commonwealth workers. In 1971 the *Compensation (Commonwealth Employees) Act 1971* repealed the 1930 Act.

The introduction of the SRC Act in 1988 was the most significant reform in the Commonwealth jurisdiction as it introduced a focus on rehabilitation which was seen as the best way to reduce spiralling costs of compensation. It included incentives through tiered income support rates for employees, gave employers statutory powers and responsibilities for rehabilitation and was paired with more reviews and investigations of claims. It also replaced lump sum compensation for a limited table of maims with a more comprehensive permanent impairment compensation based on a WPI concept.

In 1992 the SRC Act was amended to enable Commonwealth Authorities and certain corporations to apply to the Safety, Rehabilitation and Compensation Commission for a licence to accept liability for workers' compensation and to manage workers' compensation claims. The first licensees were Telstra Corporation Ltd and Australian Postal Corporation Ltd followed by a number of government business enterprises undergoing privatisation such as Australian Defence Industries (later ADI Limited and now Thales Australia), Commonwealth Serum Laboratories (later CSL Limited) and National Rail Corporation (later Pacific National (ACT) Limited, now Asciano). In 2005 Optus Administration Pty Ltd was the first licence granted to a corporation that had no previous connection to the Commonwealth other than that it was in competition with Telstra. By December 2012 there were 30 licensees in the Comcare scheme, including banks such as National Australia Bank and the Commonwealth Bank, transport companies such as Linfox, Border Express, Australian air Express and K and S Freighters, and construction or industrial companies such as John Holland and Visionstream Pty Ltd.

On 11 December 2007 the Federal Government placed a moratorium on new applications from private corporations wanting to move to the Comcare workers' compensation scheme. However, companies that had already been declared eligible to apply for a self-insurance licence by the previous government were not affected by the moratorium. In early 2008 the Minister commenced a review of the Comcare scheme, focusing on whether the scheme provided appropriate work health and safety and workers' compensation coverage for workers employed by self-insurers. In announcing the outcome of the review, the Government decided to maintain

the moratorium indefinitely to coincide with the anticipated adoption of harmonised work health and safety laws by the states and territories.

On 23 November 2009, section 100 of the SRC Act, the section that allows the Minister to declare corporations eligible for a self-insurance licence, was amended to provide that the Minister is empowered, but not compelled, to consider a request for a declaration of eligibility by corporations seeking to join the Comcare scheme as self-insurers. This applies to new requests or applications and any existing applications that have been made but not yet determined. The moratorium remains in place.

The Commonwealth first became involved in workers' compensation arrangements for seafarers with the passage of the *Seamens' Compensation Act 1911*. Despite a number of minor amendments the 1911 arrangements remained in place till 1992. In 1988 the Seamens' Compensation Review conducted by Professor Henry Luntz recommended a number of changes to the *Seamens' Compensation Act* to modernise it and to ensure consistency with arrangements being considered for Commonwealth employees. The *Seafarers Rehabilitation and Compensation Act 1992* sets out similar provisions to those applying to Commonwealth employees under the Comcare scheme.

In 2004 the MRCA 2004 was enacted to provide a system of compensation for current and former members of the Australian Defence Force and their dependants, with service on or after 1 July 2004. Service prior to that date is covered by the SRC Act and the *Veterans' Entitlements Act 1986* (VEA).

The Military Rehabilitation and Compensation Commission (MRCC) regulates the MRCA and SRC Act (for ADF members) schemes and, with the assistance of the Department of Veterans' Affairs, administers them. The types of compensation provided under the MRCA are based on the SRC Act and VEA provisions.

Under the MRCA, DVA provides rehabilitation, treatment and compensation for current (in conjunction with the relevant Service Chief) or former ADF members who sustain a mental or physical injury or contract a disease as a result of military service rendered on or after 1 July 2004. Department of Veteran's Affairs also provides compensation to their eligible dependants if their death, on or after 1 July 2004, is related to that service, if they were entitled to maximum permanent impairment compensation or had been eligible for a Special Rate Disability Pension.

DVA has a focus on providing rehabilitation services to help injured or sick personnel make as full a recovery as possible and, if possible, return to their normal employment. DVA also increases the amount of compensation available in the event of severe service-related injury, disease or death.

Note: A reference to the Commonwealth in this publication does not include Seacare or DVA unless specifically stated.

## Recent Developments

### ***The Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2011***

*The Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2011* provided for a number of amendments to the SRC Act and came into effect on 7 December 2011. These amendments included:

- the reintroduction of recess claims — employees may claim for an injury which occurs during an ordinary recess from their place of employment, such as a lunch break
- the introduction of coverage for certain employees working outside Australia where the Minister declares, by legislative instrument, the country or class of employees covered
- continuing the rights of an injured worker to claim compensation for medical expenses even where other forms of compensation are suspended
- enabling Comcare to access the Consolidated Revenue Fund to pay compensation to an injured worker with a long latency disease, where their employment was prior to 1 December 1988 but the disease manifested after that date, and
- enabling development of regulations that prescribe time limits for claim determinations and reconsiderations.

### ***The Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011 (Firefighters Act)***

The *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011* saw changes made to s7 disease provisions under the *SRC Act 1988*. New subsections 7(8), 7(9) and 7(10) have been inserted that enable fire fighters (in certain circumstances) to obtain workers' compensation when they develop certain cancers. The new subsections apply to claims for compensation with a date of injury on or after 4 July 2011.

### ***Review of the SRC 1988***

On 24 July 2012 the SRC Act review was announced. The SRC Act review is being undertaken in two parts — a review of the legislative provisions of the SRC Act and a review of the performance, governance and financial framework of the Comcare scheme. Comcare provided a submission to the SRC Act review to the Department of Education, Employment and Workplace Relations (DEEWR). Comcare's submission to the SRC Act review is available on the DEEWR website at: <http://deewr.gov.au/comcare-review-submissions-received>.

On 30 May 2013, the Minister released the report from the review of the SRC Act: <http://deewr.gov.au/safety-rehabilitation-and-compensation-act-review-0>. The report listed over 100 recommendations for modernising the SRC Act and Comcare scheme. The Minister later announced on 2 May 2013 that he would prioritise 21 recommendations in the review of the SRC Act. These priorities can be found at: <http://ministers.deewr.gov.au/shorten/better-rehabilitation-injured-workers>.

### ***New Zealand***

The first example of periodic earnings-related payments in New Zealand had its origins in the *Workers' Compensation for Accidents Act 1900*. This was the first in a long line of legislation that eventually prompted Sir Owen Woodhouse's 1967 Compensation for Personal Injury in New Zealand: Report of the Royal Commission of Inquiry (the Woodhouse Report). This led to the *Accident Compensation Act 1972*, which was updated in 1982 and replaced by a substantially amended scheme in 1992.

In 1999 elements of private insurance competition were introduced with the Accident Insurance Act 1998. This was reversed in 2001 with the *Injury Prevention, Rehabilitation and Compensation Act* (IPRC Act) renamed the *Accident Compensation Act 2001* (AC Act).

### **Recent Developments (New Zealand)**

A 2007 legislative amendment to the IPRC Act 2001 established a new merged Work Account that incorporated the Self-Employed Work Account and Employers' Account and their respective reserves and liabilities. The Injury Prevention, Rehabilitation and Compensation (Employer Levy) Regulations and the Injury Prevention, Rehabilitation and Compensation (Self-Employed Work Account Levies) Regulations were replaced with a single set of Levy Regulations covering levies for employers and self-employed.

Also in the *2007 Amendment Act*, the Medical Misadventure Account was renamed as Treatment Injury to reflect the fact that a 2005 amendment had replaced medical misadventure with the less restrictive concept of "treatment injury".



# Appendix 2

## Diseases

Diseases are classed differently from physical injuries. Diseases include any physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development. As the definition of 'disease' is interpreted differently in each jurisdiction, all jurisdictions, except Queensland and DVA, have in their legislation tables of diseases which are deemed to be caused by work.

Appendix 2 Table 1 provides a jurisdictional comparison of these lists.

Appendix Table 1: Occupational diseases as prescribed at 30 September 2012 — Occupational diseases caused by agents arising from work activities

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
<b>Chemical agents</b>									
<b>Alcohols, glycols or ketones</b>	—	—	Diseases caused by alcohols, glycols or ketones.	—	Poisoning by alcohols, glycols or ketones.	—	—	Diseases caused by alcohols, glycols or ketones.	—
<b>Antimony</b>	—	—	—	Antimony poisoning or its sequelae (antimony or its preparations or compounds).	—	—	Poisoning by antimony or a compound of antimony; any of the sequelae of such a poisoning.	—	—
<b>Arsenic</b>	Arsenic poisoning by arsenic or its compounds, and its sequelae. (Schedule 1 of the Workers Compensation Regulation 2010).	Arsenic poisoning or its sequelae (arsenic or its preparations or compounds).	Arsenic poisoning [arsenic or its preparations or compounds].	Arsenic poisoning or its sequelae (arsenic or its preparations or compounds).	Poisoning by arsenic or its toxic compounds.	Diseases caused by arsenic or its toxic compounds.	Poisoning by arsenic or a compound of arsenic; any of the sequelae of such a poisoning.	Diseases caused by arsenic or its toxic compounds.	Diseases of a type generally accepted by the medical profession as caused by arsenic or its toxic compounds.
<b>Asphyxiants: carbon monoxide, hydrogen sulphide, hydrogen cyanide</b>	—	Carbon monoxide poisoning.	Poisoning by cyanogen compounds. Poisoning by carbon monoxide. Diseases caused by asphyxiants: carbon monoxide, hydrogen cyanide or its toxic derivatives or hydrogen sulphide.	Carbon monoxide poisoning or its sequelae.	Poisoning by asphyxiants: carbon monoxide, carbon dioxide, hydrogen sulphide, hydrogen cyanide, nitrogen.	Diseases caused by asphyxiants: carbon monoxide, hydrogen cyanide or its toxic derivatives, hydrogen sulphide.	Poisoning by carbon monoxide. Poisoning by hydrogen cyanide or a compound of hydrogen cyanide. Poisoning by hydrogen sulphide.	Diseases caused by asphyxiants: carbon monoxide, hydrogen cyanide or its toxic derivatives, hydrogen sulphide.	—
<b>Benzene</b>	Poisoning by benzene or its homologues, their nitro and amido-derivatives, and its sequelae. (Schedule 1 of the Workers Compensation Regulation 2010).	Poisoning by benzol, its homologues, or its nitro and amido-derivatives, and the sequelae of these poisonings.	Poisoning by benzol. Poisoning by a homologue of benzol.	Benzene poisoning (i.e. poisoning by benzene or its homologues or their nitro and amido-derivatives) and its sequelae.	Poisoning by benzene or its toxic homologues.	Diseases caused by benzene or its toxic homologues.	Poisoning by benzene, a homologue of benzene or a nitro-derivative or amido-derivative of benzene; any of the sequelae of such a poisoning.	Diseases caused by benzene or its toxic homologues.	Diseases of a type generally accepted by the medical profession as caused by benzene or its toxic homologues.

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
<b>Beryllium</b>	—	—	—	—	Poisoning by beryllium or its toxic compounds.	Diseases caused by beryllium or its toxic compounds.	Poisoning by beryllium or a compound of beryllium; any of the sequelae of such a poisoning.	Diseases caused by beryllium or its toxic compounds.	Diseases of a type generally accepted by the medical profession as caused by beryllium or its toxic compounds.
<b>Cadmium</b>	—	—	—	—	Poisoning by cadmium or its toxic compounds.	Diseases caused by cadmium or its toxic compounds.	Poisoning by cadmium or a compound of cadmium; any of the sequelae of such a poisoning.	Diseases caused by cadmium or its toxic compounds.	Chronic renal failure diagnosed as caused by metals such as cadmium or copper, including via welding fumes.
<b>Carbon disulphide</b>	—	Carbon bisulphide poisoning.	Poisoning by carbon bisulphide.	—	Poisoning by carbon disulphide.	Diseases caused by carbon bisulphide.	Poisoning by carbon bisulphide.	Diseases caused by carbon disulphide.	Diseases of a type generally accepted by the medical profession as caused by carbon bisulfide or its toxic compounds.
<b>Chromium</b>	—	Chrome ulceration or its sequelae (chromic acid, bichromate of ammonium, potassium or sodium or their preparations).	Chrome ulceration (chromic acid or bichromate of ammonium, potassium or sodium or their preparations).	Chrome ulceration or its sequelae (chromic acid, bichromate of ammonium, potassium or sodium or their preparations).	Poisoning by chromium or its toxic compounds.	Diseases caused by chromium or its toxic compounds.	Chrome ulceration of skin or mucous membrane; any of the sequelae of such an ulceration (chromic acid, bichromate of ammonium, potassium or sodium or their preparations).	Diseases caused by chromium or its toxic compounds.	Diseases of a type generally accepted by the medical profession as caused by chrome or its toxic compounds.
<b>Copper</b>	—	Copper poisoning or its sequelae (copper or its preparations or compounds).	—	Copper poisoning or its sequelae (copper or its preparations or compounds).	—	—	Poisoning by copper or a compound of copper; any of the sequelae of such a poisoning.	—	Chronic renal failure diagnosed as caused by metals such as cadmium or copper, including via welding fumes.
<b>Ethylene oxide</b>	—	—	—	—	—	—	—	—	Diseases of a type generally accepted by the medical profession as caused by ethylene oxide.

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
<b>Fluorine</b>	—	—	Poisoning by fluorine.	—	Poisoning by fluorine or its toxic compounds.	Diseases caused by fluorine or its toxic compounds.	—	Diseases caused by fluorine or its toxic compounds.	—
<b>Halogen derivatives of aliphatic or aromatic hydrocarbons</b>	Poisoning by the halogen derivatives of hydrocarbons of the aliphatic series. (Schedule 1 of the Workers Compensation Regulation 2010).	Poisoning by the halogen derivatives of hydrocarbons of the aliphatic series.	Poisoning by a halogen derivatives of a hydrocarbon of the aliphatic series.	Halogen poisoning (ie poisoning by the halogen derivatives of hydrocarbons of the aliphatic series) and its sequelae.	Poisoning by the toxic halogen derivatives of aliphatic or aromatic hydrocarbons.	Diseases caused by the toxic halogen derivatives of aliphatic or aromatic hydrocarbons.	Poisoning by a halogen derivate of a hydrocarbon of the aliphatic series.	Diseases caused by toxic halogen derivatives of aliphatic or aromatic hydrocarbons.	Diseases of a type generally accepted by the medical profession as caused by the toxic halogen derivatives of hydrocarbons of the aliphatic series.
<b>Lead</b>	Poisoning by lead, its alloys or compounds, and its sequelae. (Schedule 1 of the Workers Compensation Regulation 2010).	Lead poisoning or its sequelae (lead or its preparations or compounds).	Lead poisoning (lead, or its preparations or compounds).	Lead poisoning or its sequelae (lead or its preparations or compounds).	Poisoning by lead or its toxic compounds.	Diseases caused by lead or its toxic compounds.	Poisoning by lead or a compound of lead; any of the sequelae of such a poisoning.	Diseases caused by lead or its toxic compounds.	Diseases of a type generally accepted by the medical profession as caused by lead or its toxic compounds.
<b>Manganese</b>	—	—	—	—	Poisoning by manganese or its toxic compounds.	Diseases caused by manganese or its toxic compounds.	Poisoning by manganese or a compound of manganese; any of the sequelae of such a poisoning.	Diseases caused by manganese or its toxic compounds.	Diseases of a type generally accepted by the medical profession as caused by manganese or its toxic compounds.
<b>Mercury</b>	Poisoning by mercury or its amalgams or compounds, and its sequelae. (Schedule 1 of the Workers Compensation Regulation 2010).	Mercury poisoning or its sequelae (mercury or its preparations or compounds).	Mercury poisoning (mercury, or its preparations or compounds).	Mercury poisoning or its sequelae (mercury or its preparations or compounds).	Poisoning by mercury or its toxic compounds.	Diseases caused by mercury or its toxic compounds.	Poisoning by mercury or a compound of mercury; any of the sequelae of such a poisoning.	Diseases caused by mercury or its toxic compounds.	Diseases of a type generally accepted by the medical profession as caused by mercury or its toxic compounds.
<b>Nitro and amino-derivatives of benzene</b>	Poisoning by benzene or its homologues, their nitro and amido-derivatives, and its sequelae. (Schedule 1 of the Workers Compensation Regulation 2010).	Poisoning by benzol, its homologues, or its nitro and amido derivatives, and the sequelae of these poisonings.	Poisoning by trinitrotoluene or by benzol or its nitro and amido derivatives (dinitrobenzol, aniline and others).	Benzene poisoning (i.e. poisoning by benzene or its homologues or their nitro and amido-derivatives) and its sequelae.	Poisoning by nitro or amino or chloro-derivatives of benzene or its derivatives.	Diseases caused by nitro and amino-derivatives of benzene or its homologues.	Poisoning by benzene, a homologue of benzene or a nitro-derivative or amido-derivative of benzene; any of the sequelae of such a poisoning.	Diseases caused by toxic nitro and amino-derivatives of benzene or its homologues.	Diseases of a type generally accepted by the medical profession as caused by nitro and amido- toxic derivatives of benzene or its homologues.

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
<b>Nitroglycerine or other nitric acid esters</b>	—	—	—	—	Poisoning by nitroglycerine or other nitric acid esters.	Diseases caused by Nitro glycerine or other Nitric Acid Esters.	Diseases caused by nitroglycerine or other nitric acid esters.	Diseases caused by nitroglycerine or other nitric acid esters.	—
<b>Organic solvents</b>	—	—	—	—	—	—	—	—	Chronic solvent-induced encephalopathy diagnosed as caused by organic solvents, particularly styrene, toluene, xylene, trichloroethylene, methylene chloride or white spirit. Peripheral neuropathy diagnosed as caused by organic solvents such as n-hexane, carbon disulphide, or trichloroethylene, pesticides such as organophosphates; acrylamide.
<b>Oxides of nitrogen</b>	—	—	Poisoning by nitrous fumes.	Nitrous fumes poisoning and its sequelae.	Poisoning by nitrous fumes.	—	Poisoning by an oxide of nitrogen; any of the sequelae of such a poisoning.	—	—
<b>Phosphorus</b>	Phosphorus poisoning by phosphorous or its compounds, and its sequelae. (Schedule 1 of the Workers Compensation Regulation 2010).	Phosphorous poisoning or its sequelae (phosphorous or its preparations or compounds).	Phosphorus poisoning (phosphorus, or its preparations or compounds).	Phosphorus poisoning or its sequelae (phosphorus or its preparations or compounds).	Poisoning by phosphorus or its toxic compounds.	Diseases caused by phosphorus or its toxic compounds.	Poisoning by phosphorus or a compound of phosphorus; any of the sequelae of such a poisoning.	Diseases caused by phosphorus or its toxic compounds.	Diseases of a type generally accepted by the medical profession as caused by phosphorus or its toxic compounds.
<b>Tungsten</b>	—	—	—	—	—	—	—	—	Diseases of a type generally accepted by the medical profession as caused by tungsten.

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
<b>Zinc</b>	—	Zinc poisoning or its sequelae (zinc or its preparations or compounds).	—	Zinc poisoning or its sequelae (zinc or its preparations or compounds).	—	—	Poisoning by zinc or a compound of zinc; any of the sequelae of such a poisoning.	—	—
<b>Other chemical agent at work not mentioned in the preceding terms</b>	—	—	Arsenic, phosphorus, lead, mercury or other mineral poisoning (arsenic, phosphorus, lead, mercury, or other mineral, or their preparations or compounds).	Primary eoitgheliomatous cancer of the skin from work involving handling of tar, pitch, bitumen, mineral oil, paraffin or the compounds products or residues of those substances	—	—	—	—	—
<b>Hearing impairment caused by noise</b>	—	—	Noise induced hearing loss.	Noise induced hearing loss.	—	Hearing impairment caused by noise. Diseases caused by ionizing radiations.	—	—	—
<b>Ionizing radiations</b>	Pathological manifestations of a kind that are due to or contributed to by: (a) radium and other radioactive substances, or (b) X-rays. (Schedule 1 of the Workers Compensation Regulation 2010).	Pathological manifestations due to radium and other radioactive substances, or X-rays.	Pathological manifestations due to: a) radium and other radioactive substances b) X-rays, or c) Lasers.	Pathological manifestations due to: a) radium and other radioactive substances, or b) X-rays.	Disease caused by ionizing radiations.	Diseases caused by ionizing radiations.	Pathological condition caused by: a) radium or other radioactive substance, or b) X-rays.	Diseases caused by ionising radiations.	Diseases of a type generally accepted by the medical profession as caused by ionising radiations.
<b>Vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves</b>	—	—	Effects of vibration (including Raynaud's phenomenon and dead hand).	—	—	Diseases caused by vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves).	—	Diseases caused by vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves).	Hand-arm vibration syndrome diagnosed as caused by hand and/or arm vibration.

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
<b>Work in compressed or decompressed air</b>	—	—	Compressed air illness.	—	Compressed air illness including avascular necrosis (underground, underwater, high altitude).	Diseases caused by work in compressed air.	—	Diseases caused by work in compressed air.	—
<b>Diseases caused by other physical agents at work not mentioned in the preceding terms</b>	Primary epitheliomatous cancer of the skin (Schedule 1 of the Workers Compensation Regulation 2010).	—	Effects of insolation (prolonged exposure to sunlight). Effects of electrical currents.	—	—	—	—	—	—
<b>Biological agents and infectious or parasitic diseases</b>									
<b>Anthrax</b>	Anthrax infection. (Schedule 1 of the Workers Compensation Regulation 2010).	Anthrax.	Anthrax.	Anthrax.	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible.	Anthrax.	Anthrax.	—	Anthrax infection.
<b>Brucellosis</b>	Brucellosis. (Schedule 1 of the Workers Compensation Regulation 2010).	Brucellosis (Undulant fever).	—	Brucellosis.	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible. Note — s25(2)(b) provides that compensation is not payable in respect of the disease known as undulant fever or brucellosis unless an accredited medical practitioner has certified in writing that he is satisfied as to the result of the pathological examination of the blood that the worker is suffering from that disease.	Brucellosis.	—	—	Brucellosis diagnosed as caused by working with animals or their carcasses.

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
<b>Hepatitis viruses</b>	—	—	Hepatitis B.	—	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible.	Hepatitis A and B.	—	—	—
<b>Human immunodeficiency virus (HIV)</b>	—	—	HIV (s31F).	—	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible.	A.I.D.S.	—	—	—
<b>Leptospirosis</b>	Leptospirosis. (Schedule 1 of the Workers Compensation Regulation 2010.)	Leptospirosis.	Leptospirosis.	Leptospirosis.	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible.	Leptospirosis.	—	—	Leptospirosis diagnosed as caused by working with animals or their carcasses.
<b>Diseases caused by other biological agents at work not mentioned in the preceding terms</b>	Q fever. (Schedule 1 of the Workers' Compensation Regulation 2010.)	Q fever as caused by the micro-organism <i>Coxiella burnetii</i> (also known as <i>Rickettsia burnetii</i> ), in any of its clinical manifestations [abattoirs, slaughterhouses, knackeries]. Septic poisoning or its sequelae (from meat, meat products, animal products).	Communicable diseases. Endemic typhus. Scrub typhus. Brill's disease. Swineherds disease. Plague. Mite dermatitis. Scrub itch. AIDS (s31F).	Ankylostomiasis [mining]. Q fever. Septic poisoning or its sequelae (from meat, meat products, animal byproducts).	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible.	Q fever.	Ankylostomiasis (mine). Q fever [exposure to <i>Coxiella burnetii</i> ].	Occupational infectious or parasitic diseases (health or laboratory work, veterinary work, handling of animals).	Orf diagnosed as caused by working with animals or their carcasses. Streptococcus suis diagnosed as caused by working with animals or their carcasses.
<b>Asthma caused by recognised sensitizing agents or irritants inherent to the work process</b>			Occupational asthma caused by sensitizing agents or irritants inherent to the work process.	Asthma or asthmatic attacks (dust of red pine, western red cedar, blackwood, flour, flour dust).				Occupational asthma caused by sensitizing agents or irritants.	Occupational asthma diagnosed as caused by recognised sensitising agents inherent in the work process such as, but not limited to, isocyanates, certain wood dusts, flour dusts, animal proteins, enzymes and latex.



	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
<b>Bronchopulmonary diseases caused by dust of cotton (byssinosis), flax, hemp, sisal or sugar cane</b>	Byssinosis bagassosis (Schedule 1 of the Workers' Compensation (Dust Diseases) Act 1942).	—	Bronchopulmonary diseases caused by cotton, flax, hemp or sisal dust.	—	—	Bronchopulmonary diseases caused by dust of cotton (byssinosis), flax, hemp, sisal, dust.	—	Bronchopulmonary diseases caused by cotton dust (byssinosis), or flax, hemp or sisal dust.	Byssinosis diagnosed as caused by working with cotton, flax, hemp, or sisal dust.
<b>Bronchopulmonary diseases caused by hard-metal dust</b>	Hard metal pneumoconiosis (Schedule 1 of the Workers' Compensation (Dust Diseases) Act 1942).	—	—	—	—	Bronchopulmonary diseases caused by hard metal dust.	—	Bronchopulmonary diseases caused by hard-metal dust.	—
<b>Chronic obstructive pulmonary diseases caused by inhalation of coal dust, dust from stone quarries, wood dust, dust from cereals and agricultural work, dust in animal stables, dust from textiles, and paper dust arising from work activities</b>	Coal dust pneumoconiosis Farmer's lung (Schedule 1 of the Workers' Compensation (Dust Diseases) Act 1942).	—	—	—	—	—	—	—	Chronic obstructive pulmonary disease diagnosed as caused by coal, silica, cotton dust or grain dust.
<b>Diseases of the lung caused by aluminium</b>	Aluminosis (Schedule 1 of the Workers' Compensation (Dust Diseases) Act 1942).	—	—	—	An asthmatic condition caused by fumes resulting from the primary aluminium smelting process.	—	—	—	—
<b>Extrinsic allergic alveolitis caused by the inhalation of organic dusts or microbially contaminated aerosols</b>	—	—	Extrinsic allergic alveolitis caused by the inhalation of organic dusts.	—	—	—	—	Extrinsic allergic alveolitis and its sequelae (exposure to the inhalation of organic dusts).	Extrinsic allergic alveolitis diagnosed as caused by work involving the inhalation of organic dusts.

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
<b>Pneumoconioses caused by fibrogenic mineral dust (silicosis, anthraco-silicosis, asbestosis)</b>	Asbestosis Silicosis (Schedule 1 of the Workers' Compensation (Dust Diseases) Act 1942).	Asbestosis, with or without mesothelioma. Silicosis, with or without pulmonary tuberculosis.	—	Asbestosis. Pneumoconiosis, including silicosis.	Diseases caused by occupational exposure to asbestos are covered by the Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011 from 31 Oct 2011.	Pneumononioses caused by sclerogenic mineral dust (including silicosis, anthracosilicosis and asbestosis) and silico-tuberculosis, provided that silicosis is an essential factor in causing the resultant incapacity or death.	Asbestosis. Pneumoconiosis (matter).	Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthraco-silicosis, asbestosis) and silico-tuberculosis, provided that silicosis is an essential factor causing the resultant incapacity, impairment or death.	Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthraco-silicosis, asbestosis) and silico-tuberculosis, provided that silicosis is an essential factor causing the resultant incapacity or death.
<b>Pneumoconioses caused by non-fibrogenic mineral dust</b>	Talcosis Berylliosis (Schedule 1 of the Workers' Compensation (Dust Diseases) Act 1942).	—	Pneumoconiosis (mineral dusts).	—	—	—	Pneumoconiosis (matter).	—	Pneumoconiosis diagnosed as caused by tin, iron oxide, barium or cobalt.
<b>Silicotuberculosis</b>	Silico-tuberculosis (Schedule 1 of the Workers' Compensation (Dust Diseases) Act 1942).	Silicosis, with or without pulmonary tuberculosis.	—	—	Silicotuberculosis.	—	—	Silico-tuberculosis (see above).	Silico-tuberculosis (see above).
<b>Other respiratory disease not mentioned in the preceding items</b>	Asbestos related pleural diseases Asbestos induced carcinoma Mesothelioma (Schedule 1 of the Workers' Compensation (Dust Diseases) Act 1942).	—	Diffuse pleural fibrosis Mesothelioma	—	—	—	—	—	—

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
<b>Allergic contact dermatoses and contract urticaria caused by other recognised allergy-provoking agents arising from work activities not included in other items</b>	—	—	—	—	—	—	—	—	Occupational allergic contact dermatitis diagnosed as caused by recognised sensitising agents inherent in the work process such as, but not limited to, nickel and other metals, rubber additives, resins, petroleum distillates, solvents, soaps, detergents, and plant allergens.
<b>Vitiligo caused by other recognised agents arising from work activities not included in other items</b>	—	—	—	—	—	—	—	—	Vitiligo diagnosed as caused by para-tertiary-butylphenol, para-tertiary-butylcatechol, para-amylphenol, hydroquinone, or the monobenzyl or monobutyl ether of hydroquinone.
<b>Other skin diseases caused by physical, chemical or biological agents at work not included in other items</b>	—	Dermatitis venenata (contact with vegetable or mineral matter).	Any dematosis, ulceration or injury to the mucous membranes of the mouth or nose wholly or partly produced or aggravated by contact with or inhalation or ingestion of irritating dusts, solids, gases or fumes or mineral or vegetable irritants or ray burn.	Dermatitis (dust of blackwood).	—	—	—	Skin diseases caused by physical, chemical or biological agents at work not included under other items.	—
<b>Chronic tenosynovitis of hand and wrist due to repetitive movements, forceful exertions and extreme postures of the wrist</b>	—	Tenosynovitis (inflammation of the tendon sheaths of the hand, wrists, forearm or elbow).	—	—	—	—	Tenosynovitis (hand, forearm).	—	—

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
<b>Olecranon bursitis due to prolonged pressure of the elbow region</b>	—	Subcutaneous cellulitis or acute bursitis over the elbow (mining).	—	—	—	—	—	—	—
<b>Prepatellar bursitis due to prolonged stay in kneeling position</b>	—	Subcutaneous cellulitis or acute bursitis arising at or about the knee (beat knee) (mining).	—	—	—	—	—	—	—

<sup>1</sup> Includes Seacare.

Appendix Table 2: Occupational diseases as prescribed at 30 September 2012 — Occupational cancer

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
<b>Cancer caused by the following agents</b>									
<b>Asbestos</b>	Asbestos induced carcinoma <sup>2</sup> . Asbestosis <sup>2</sup> .  Asbestos related pleural diseases <sup>2</sup> . Mesothelioma <sup>2</sup> .	Asbestosis, with or without mesothelioma.	Mesothelioma. Lung cancer. Diffuse pleural fibrosis.	Asbestosis involving exposure to inhalation of asbestos fibres.	Primary malignant neoplasm of the mesothelium (diffuse mesothelioma) of the pleura or of the peritoneum.  Note — Diseases caused by occupational exposure to asbestos are covered by the <i>Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011</i> from 31 Oct 2011.	Lung cancer or mesotheliomas caused by asbestos.	Asbestosis, mesothelioma.	Lung cancer or mesotheliomas caused by asbestos.	Lung cancer or mesothelioma diagnosed as caused by asbestos.
<b>Beta-naphthylamine</b>	—	—	—	—	—	—	—	—	Bladder cancer diagnosed as caused by 2-naphthylamine, benzidine, 4-aminobiphenyl, N,N-Bis (2-chloroethyl)-2-naphthylamine, other aromatic amines, or polycyclic aromatic hydrocarbons.
<b>Bis chloromethyl ether (BCME)</b>	—	—	—	—	—	—	—	—	Lung cancer diagnosed as caused by bis (chloromethyl) ether (and chloromethyl methyl ether), cadmium, coke oven emissions, nickel, radon, silica or soot.

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
<b>Coal tars, coal tar pitches or soots</b>	—	—	—	—	—	—	Primary epitheliomatous cancer of the skin (exposure to or contact with tar, pitch, bitumen, mineral oil, paraffin or a compound, product, or residue of any of those substances).	—	Lung cancer diagnosed as caused by bis (chloromethyl) ether (and chloromethyl methyl ether), cadmium, coke oven emissions, nickel, radon, silica or soot.
<b>Coke oven emissions</b>	—	—	—	—	—	—	—	—	Lung cancer diagnosed as caused by bis (chloromethyl) ether (and chloromethyl methyl ether), cadmium, coke oven emissions, nickel, radon, silica or soot.
<b>Nickel compounds</b>	—	—	—	—	—	—	—	—	Lung cancer diagnosed as caused by bis (chloromethyl) ether (and chloromethyl methyl ether), cadmium, coke oven emissions, nickel, radon, silica or soot.
<b>Tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances</b>	Primary epitheliomatous cancer of the skin (Any process involving the handling or use of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of these substances).	Primary epitheliomatous cancer of the skin (exposure to tar, pitch, bitumen, mineral oil, paraffin or compounds, products, or residues of these substances).	Epitheliomatous cancer or ulceration of skin or the corneal surface of the eye due to tar, pitch, bitumen, mineral oil, paraffin or compounds, products, or residues of those substances.	Primary epitheliomatous cancer of the skin due to handling or use of tar, pitch, bitumen, mineral oil, paraffin or compounds, products, or residues of those substances.	Primary squamous cell carcinoma of skin due to exposure to tar, pitch, mineral oil, anthracene or compounds, products, or residues of these substances.	Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene or the compounds, products, or residues of these substances.	Primary epitheliomatous cancer of the skin (exposure to tar, pitch, bitumen, mineral oil, paraffin or a compound, product, or residue of any of those substances).	Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene or the compounds, products, or residues of these substances.	Primary epitheliomatous cancer of the skin diagnosed as caused by tar, pitch, bitumen, mineral oil, anthracene or the compounds, products, or residues of these substances.  Primary epitheliomatous cancer of the skin diagnosed as

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									caused by shale oil.
<b>Vinyl chloride</b>	—	—	—	—	—	—	—	—	Angiosarcoma of the liver diagnosed as caused by vinyl chloride monomer.
<b>Wood dust</b>	—	—	—	—	—	—	—	—	Sino-nasal carcinoma diagnosed as caused by working with wood dust. Hodgkin's lymphoma diagnosed as caused by wood dust.
<b>Cancer caused by other agents at work not mentioned in the preceding items</b>	—	—	—	—	—	—	—	s7(8) and s7(9) of the SRC 1988 provide the legal presumption that if an employee has been employed as a firefighter for a certain period before being diagnosed with one of the prescribed cancers in s7(8); and has been exposed to the hazards of a fire scene during that period, their employment has contributed to a significant degree to the contraction of the disease. The above provisions provide a separate mechanism for firefighters to access compensation under the SRC Act.	Naso-pharyngeal carcinoma diagnosed as caused by formaldehyde. Laryngeal carcinoma diagnosed as caused by sulphuric acid mists or organic solvents. Lung cancer diagnosed as caused by bis (chloromethyl) ether (and chloromethyl methyl ether), cadmium, coke oven emissions, nickel, radon, silica or soot. Bladder cancer diagnosed as caused by 2-naphthylamine, benzidine, 4-aminobiphenyl, N,N-Bis (2-chloroethyl)-2-naphthylamine,

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
									other aromatic amines, or polycyclic aromatic hydrocarbons.
<b>Miners' nystagmus</b>	—	—	—	—	Nystagmus (any work in or about a mine).	—	—	—	
<b>Legislation and/ or instrument</b>	Workers Compensation Regulation 2010 — Schedule 1. <i>Workers' Compensation (Dust Diseases) Act 1942</i> — Schedule 1 <sup>2</sup> .	<i>Accident Compensation Act</i> s87. Victoria Government Gazette No.92 — Friday, 30 August 1985.	<i>Workers' Compensation and Injury Management Act 1981</i> — Schedule 3.	<i>Workers Rehabilitation and Compensation Act 1986</i> — Schedule 2.	<i>Workers Rehabilitation and Compensation Act 1988</i> — Schedule 4.	<i>Workers Rehabilitation and Compensation Act</i> — Schedule 1.	<i>Workers Compensation Regulation 2003</i> — Schedule 1.	<i>Safety, Rehabilitation and Compensation Act 1988</i> s7(1). <i>Safety, Rehabilitation and Compensation (Specified Diseases) Notice 2007</i> (1). <i>Seafarers Rehabilitation and Compensation Act 1992</i> s10(1). <i>Seafarers Rehabilitation and Compensation Act 1992</i> Notice of Declarations and Specifications 25/05/1993.	<i>Accident Compensation Act 2001</i> s30(3), 60 — Schedule 2.

<sup>1</sup> Includes Seacare.

<sup>2</sup> Schedule 1 of the the *Workers' Compensation (Dust Diseases) Act 1942* lists the following dust diseases: *Aluminosis, Asbestosis, Asbestos induced carcinoma, Asbestos related pleural disease (ARPD), Bagassosis, Berylliosis, Byssinosis, Coal dust pneumoconiosis, Farmers' Lung, Hard Metal Pneumoconiosis, Mesothelioma, Silicosis, Silico-tuberculosis and Talcosis.*



# Glossary

## **Administrative scheme**

A scheme put in place where no legislation applies.

## **Attendant care**

Services of a person to provide regular and essential personal care to an injured worker.

## **Benefits**

Money paid to injured workers as compensation for economic and non-economic loss arising from work related injury.

## **Category 1 employers (NSW)**

a) an employer insured under a policy of insurance to which the insurance premiums order for the time being in force applies and whose basic tariff premium (within the meaning of that order) for that policy would exceed \$50 000, if the period of insurance to which the premium relates were 12 months, or

b) an employer insured under more than one policy of insurance to which the insurance premiums order for the time being in force applies and whose combined basic tariff premiums (within the meaning of that order) for those policies would exceed \$50 000, if the period of insurance to which each premium relates were 12 months, or

c) an employer who is self-insured, or

d) an employer who is insured with a specialised insurer and who employs more than 20 workers.

Category 2 employer means an employer who is not a category 1 employer.

## **Centrally funded schemes**

Single public insurer (government agency) that performs most, if not all, workers' compensation functions. Central insurers underwrite their schemes.

## **Common law**

Provisions that allow, or preclude, injured workers from taking legal action through the courts to sue their employers for the costs of injury arising from negligence leading to unsafe workplaces.

## **Commutation payment**

Depending on the particular legislation of a jurisdiction, and under certain circumstances, an ongoing liability for specified workers' compensation entitlements can be commuted to a lump sum payment. Following payment of the lump sum, liability for those entitlements ceases. See also redemption payment and settlement payment.

## **Competitive fund**

Insurer functions are provided by the private sector, through approved insurance companies. This includes underwriting and claims management. The degree of regulation of competitive schemes by government varies amongst the competitive schemes.

### **Cross-border arrangements**

Provisions that allow workers who are injured away from their main state or territory of employment to be covered by workers' compensation in their main state or territory of employment.

### **Current Work Capacity**

As the result of an injury, a worker is presently unable to return to pre-injury employment but is able to return to work in suitable employment (compared with partially incapacitated).

### **Date of injury**

The date a worker became injured — in the case of diseases, this may be the first time symptoms became manifest or the first time medical treatment was sought.

### **Death benefits**

Compensation payable to the financial dependants (usually families) of workers who die in work-related circumstances.

### **Deemed worker**

People who provide a service but may not have the status of a worker and are deemed by legislation or regulation to be covered for workers' compensation as though they were workers.

### **Diseases**

Can include any physical or mental disorder, defect or morbid condition, whether of sudden or gradual development.

### **Disease (DVA) means:**

- a) any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development); or
- b) the recurrence of such an ailment, disorder, defect or morbid condition; but does not include:
- c) the aggravation of such an ailment, disorder, defect or morbid condition; or
- d) a temporary departure from:
  - (i) the normal physiological state, or
  - (ii) the accepted ranges of physiological or biochemical measures

that results from normal physiological stress (for example, the effect of exercise on blood pressure) or the temporary effect of extraneous agents (for example, alcohol on blood cholesterol levels).

### **Dispute resolution**

Processes for resolving disputes between parties in the claims process.

### **Employee**

A person who works for an employer on a full-time or part-time basis under a contract of service and receives remuneration in wages or salary. See also worker.

## **Funeral costs**

Reimbursement for the cost of a funeral to the family of a deceased worker or to a person who buries a deceased worker.

## **Home help**

Services of a person to provide domestic assistance to an injured worker.

## **Home Jurisdiction**

The workers' compensation authority with responsibility in the state or territory where a workplace rehabilitation provider organisation is registered for Australian Business Number (ABN) purposes. However, where the organisation does not intend to deliver services in that state or territory, the home jurisdiction is the workers' compensation authority where they intend to deliver the majority of the services.

## **Hybrid schemes**

Essentially a central fund where functions such as claims management and rehabilitation are contracted out to private sector bodies, such as insurers with specialised expertise in injury management.

## **Income replacement**

Payments that enable injured workers to substantially maintain their living standards if they are unable to work due to a work related injury (also known as weekly payments).

## **Injury**

Can include a full range of physical injuries, illnesses, psychological conditions and diseases, as well as aggravations, exacerbations and recurrences of existing injuries.

## **Injury (DVA)**

Means any physical or mental injury (including the recurrence of a physical or mental injury) but does not include:

- a) a disease; or
- b) the aggravation of a physical or mental injury.

## **Instrument of Approval**

The document issued by the workers' compensation authority that has approved the workplace rehabilitation provider. This may be called a certificate, agreement or instrument depending on the particular workers' compensation authority.

## **Levy**

The term used in South Australia and New Zealand for Premiums. See Premiums.

## **Medical and hospital costs**

Reimbursement of medical and other treatment costs related to workplace injury which can include hospital stays, ambulance transport, pharmaceuticals, aids and appliances, and household help.

### **Multi-jurisdiction employer**

An employer who conducts their business in more than one jurisdiction and has separate workers' compensation cover in each jurisdiction.

### **Net assets**

For privately underwritten schemes, the balance sheet claim provisions and for centrally funded schemes, the total current and non-current assets minus the outstanding claims recoveries at the end of each financial year.

### **Net funding ratio**

Ratio of assets to outstanding liabilities.

### **Net liabilities**

Centrally funded schemes are the total current and non-current liabilities minus the outstanding claim recoveries at the end of each financial year, and for privately under written schemes, the central estimate of outstanding claims for the scheme at the end of each financial year.

### **No current work capacity**

The injured worker is unable to perform any duties in the workplace (compared with totally incapacitated).

### **Non-economic loss**

Measure of the impact of an injury on a worker's lifestyle, such as pain and suffering, disfigurement and reduced expectation of life, normally associated with permanent impairment.

### **Partially incapacitated**

The worker is able to return to work and perform suitable duties, even if it is not the same job they were previously doing before the injury (compared with current work capacity).

### **Permanent impairment payments**

Payment compensating for the permanent loss of a body part or function, for which there is little expectation of recovery or improvement.

### **Premiums**

A percentage of the amount that an employer expects to pay to their workers in a given period paid as premium to a workers' compensation insurer.

### **Privately underwritten schemes**

Schemes of workers' compensation where the underwriting function is performed by the private insurers, with varying degrees of government regulation.

### **Prudential requirements**

Ensures that private insurers can operate on a fully funded basis to meet all expected compensation payments and the costs of managing claims.

### **Psychological injury**

A range of conditions relating to the functioning of people's minds.

## **Q-COMP**

The Queensland Workers' Compensation regulatory authority.

### **Redemption payment**

Depending on the particular legislation of a jurisdiction and under certain circumstances, an ongoing liability for specified workers' compensation entitlements can be redeemed to a lump sum payment. Following payment of the lump sum, liability for those entitlements ceases. See also commutation payment and settlement payment.

### **Rehabilitation**

The process of assisting workers to recover from work related injury and returning to work which can include medical treatment, retraining, the use of aids and appliances, alterations to workplace and home, and gradual return to full time or part time duties. See return to work.

### **Remuneration**

The total amount of gross earnings of workers of an employer. See also premiums.

### **Return to Work**

The process of employers or other people or organisations helping injured workers to get back to work or stay at work while they recover from an injury. See also rehabilitation.

### **Self Insurer**

Employers who manage their workers' compensation arrangements themselves without having to pay annual premiums.

### **Serious claims**

Includes all accepted workers' compensation claims involving temporary incapacity of one or more weeks plus all accepted claims for fatality or permanent incapacity.

### **Settlement payment**

Depending on the particular legislation of a jurisdiction, and under certain circumstances, an ongoing liability for workers' compensation entitlements can be settled via a lump sum payment. Following payment of the lump sum liability for those entitlements ceases. See also commutation payment and redemption payment.

### **State of connection**

The jurisdiction decided through applying the test in s5.8, when an injured worker has been working in more than one state or territory.

### **Suitable Duties**

Duties for which an injured worker is suited in relation to their capacities at a particular point of time in the workplace rehabilitation service continuum.

### **Suitable Work/Employment**

Employment in work for which the worker is suited in relation to the worker's capacities, age, education, skills, work experience and place of residence.

### **Threshold test**

A level of impairment an injured worker must reach.

### **Totally incapacitated**

The injured worker is unable to perform any duties in the workplace (compared with no current work capacity).

### **Types of damages**

Damages that may be suffered by an injured worker and which can include general damages (compensation for pain and suffering), economic loss (compensation for loss of past earnings or future earning capacity), legal costs and medical and hospital costs.

### **Underwriting**

The process of writing and signing a policy of insurance.

### **Worker**

A person who is covered for workers' compensation benefits.

### **Workers' compensation**

Financial support to workers who are injured in the course of employment and suffer a consequent loss.

### **Workplace Rehabilitation**

A managed process involving timely intervention with appropriate and adequate services based on assessed need, aimed at maintaining injured or ill employees in, or returning them to, suitable employment.

### **Workplace Rehabilitation Consultant**

Suitably qualified health/behavioural science professional employed by a workplace rehabilitation provider to provide workplace rehabilitation services.

### **Workplace Rehabilitation Services**

The types of services referred to in the Workplace Rehabilitation Model that may assist a worker return to work with the same (pre-injury) employer or with a new employer.

### **Workplace Rehabilitation Provider**

An organisation that has been approved by a workers' compensation authority to provide workplace rehabilitation services to assist injured workers return to work following a workplace injury. Where appropriate within the context of workplace rehabilitation service provision, a reference to a workplace rehabilitation provider also includes a reference to a workplace rehabilitation consultant.

### **Workers' Compensation Authority/Workers' Compensation Authorities**

The body responsible for workers' compensation legislation and policy covering designated employers and their employees within their area of legal authority.

# Acronyms and abbreviations

AAT	Administrative Appeals Tribunal (Cth)
ABS	Australian Bureau of Statistics
ACA	Accident Compensation Act (Vic)
ACC	Accident Compensation Corporation (NZ)
ACTPS	ACT Public Sector
ADF	Australian Defence Force
AE	Accredited Employer (NZ)
AIMS	ACT WorkCover Information Management System
AMA	American Medical Association
AMS	Approved Medical Specialists (NSW)
ANZSIC	Australia and New Zealand Standard Industry Classification
ASIC	Australian Standard Industry Classification
AWE	Average Weekly Earnings (SA*, NT, ACT)
AWOTEFA	Average Weekly Ordinary Time Earnings of Full-time Adults (Cth)
BHI	Binaural Hearing Impairment (Tas)
CPI	Consumer Price Index
CPM	Comparative Performance Monitoring
DVA	Department of Veterans' Affairs
GST	Goods and Services Tax
HECS	Higher Education Contribution Scheme
HWCA	Heads of Workers' Compensation Authorities

IPRC Act	Injury Prevention, Rehabilitation and Compensation Act (NZ)
IPs	Impairment Points
JAS-ANZ	Joint Accreditation System of Australia and New Zealand
MAT	Medical Assessment Tribunal
MRCA	Military Rehabilitation and Compensation Act (Cth)
MRCC	Military Rehabilitation and Compensation Commission
NTPS	Northern Territory Public Service
NWE	Normal Weekly Earnings (Qld, Tas, NT, Cth)
NWE	Notional Weekly Earnings (SA)
OHS	Occupational Health and Safety
PIAWE	Pre-injury Average Weekly Earnings
PIP	Personal Injury Plan (ACT)
Q-COMP	See Glossary
QOTE	Queensland Ordinary Time Earnings (Qld)
RISE	Re-employment Incentive Scheme for Employers (SA)
RTW	Return to work
SRC Act	Safety, Rehabilitation and Compensation Act (Cth)
SRCC	Safety, Rehabilitation and Compensation Commission
TAFE	Technical and Further Education
TMF	Treasury Managed Fund (NSW)



TRMF	Tasmanian Risk Management Fund (Tas)
VEA	Veterans' Entitlement Act (Cth)
VWA	Victorian WorkCover Authority
WAVE	Workers Average Weekly Earnings (SA)
WCIM Act	Workers Compensation and Injury Management Act (WA)
WIC	WorkCover Industry Classification (NSW, Qld)
WISE	WorkCover Incentive Scheme for Employers (Vic)
WPI	Whole Person Impairment (NSW, Vic, WA, Tas, NT, Cth)
WRC Act	Workers' Rehabilitation and Compensation Act (SA)
WRI	Work-Related Impairment (Qld)
WSV	WorkSafe Victoria

\*state-based statistics

#### Enquiries

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