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 *Safety Rehabilitation Compensation Act 1988*; the second is for certain seafarers under the *Seafarers Rehabilitation and Compensation Act 1992*; and the third is for Australian Defence Force (ADF) personnel with service on or after 1 July 2004 under the *Military Rehabilitation and Compensation Act 2004*.

The origin of these Australian workers' compensation systems lies in 19th 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. Coverage for workers' compensation gradually expanded to include most workers and lump sum payments for loss of body parts were introduced. By 1926 NSW 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 per cent 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

1910-1987

New South Wales 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.

1987-2012

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 NSW WorkCover Scheme saw the target premium collection rate for NSW employers reduced by an average 30 per cent between November 2005 and 2008. A 10 per cent 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.

2012

In June 2012 the NSW Government introduced significant 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 affected 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 came into effect in stages and included:

- changes to permanent impairment lump sum compensation claims made on or after 19 June 2012
- changes to parameters around journey claims, heart attack and stroke injuries and disease injuries for an injury received on or after 19 June 2012
- reforms for seriously injured workers (injured workers with a permanent impairment of more than 30 per cent) which came into effect on 17 September 2012
- changes to weekly payments (1 October 2012 for new claims, 1 January 2013 for existing claims) including calculation methods, step-downs and caps
- the introduction of work capacity assessments
- the establishment of the WorkCover Independent Review Officer (now Workers' Compensation Independent Review Officer from 1 October 2012, and
- changes to medical and related treatment (1 October 2012 for new claims, and 1 January 2013 for existing claims).

2014

The *Workers Compensation Amendment (Existing Claims) Regulation 2014* was made on 3 September 2014 and applies some benefit reforms to workers who made a claim for compensation before 1 October 2012.

2015

In August 2015, the NSW Government announced a $1 billion staged reform package with three elements:

- enhanced benefits for injured workers, including changes to lump sum compensation for permanent impairment, increased death benefit lump sum and funeral expenses, extension of weekly payments beyond retiring age, extended medical entitlements, the introduction of work capacity decision 'stay', the introduction of new return to work assistance benefits, the

regulation of legal costs for work capacity decision reviews and the regulation of pre-injury average weekly earnings.

- premium reductions for employers with good safety and return to work records
- structural reform for better service and regulation

On 1 September 2015 the *State Insurance and Care Governance Act 2015* commenced, paving the way for three new organisations - Insurance & Care NSW (icare), the State Insurance Regulatory Authority (SIRA), and SafeWork NSW. icare manages approximately $30 billion in assets and $26 billion in liabilities, making it the largest general insurer service provider in Australia. SIRA is a new government organisation responsible for the regulatory functions in relation to workers' compensation insurance, motor accidents compulsory third party (CTP) insurance and home building compensation.

2016

The 2016/17 Market Practice and Premiums Guidelines replaced the publication of the WorkCover Insurance Premiums Order, and provide a new mechanism for the setting and assessment of workers' compensation premiums. The Guidelines are published with four Annexures on the SIRA website and apply to policies issued or renewed from 30 June 2016.

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 American Medical Association Guides (4th edition) in place since 2003
- retrospective amendments to the Act to maintain the status quo regarding 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.

2010

The *Accident Compensation 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 per cent increase in no-fault lump sum benefits for workers with spinal impairments
- a 25 per cent 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 per cent to 80 per cent 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 issue 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 Victorian WorkCover Authority 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 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 per cent 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.

2011

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

2013

The *Workplace Injury Rehabilitation and Compensation Act 2013* commenced on 1 July 2014. The Act recasts the *Accident Compensation Act 1985* and the *Accident Compensation (WorkCover Insurance) Act 1993* into a single Act.

Queensland

1905-1990

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.

1990

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.

1996

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'.

2003

Following a review under National Competition Policy, the *Workers' Compensation and Rehabilitation Act 2003* repealed the 1996 Act and introduced separate delivery and regulation of the workers' compensation scheme.

2010

Legislative amendments capping damages and increasing the onus on plaintiffs to prove negligence (in line with aspects of civil liability legislation) were passed in June 2010.

2013

Legislative amendments were passed in response to the Inquiry into the Operation of Queensland's Workers' Compensation Scheme by the Queensland Parliament's Finance and Administration Committee. A greater than five per cent degree of permanent impairment threshold was introduced for injured workers seeking damages. Regulatory functions were merged into the Department of Justice and Attorney-General.

2015

The common law threshold was removed effective 31 January 2015 and deeming provisions for firefighters with prescribed diseases were introduced.

2016

The National Injury Insurance Scheme for workplace accidents connected with Queensland was introduced to provide eligible seriously injured workers with a statutory entitlement to lifetime treatment, care and support payments (from 1 July 2016).

Western Australia (WA)

Western Australia 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.

2009 Legislative Review

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.

The second stage of the legislative review progressed in 2013/2014 and saw the release of the *Review of Workers' Compensation and Injury Management Act 1981 Discussion Paper*. Stakeholder feedback on the discussion paper informed the subsequent *Review of Workers' Compensation and Injury Management Act 1981 Final Report* (final report).

The final report was tabled in Parliament on 26 June 2014. The report contains 171 recommendations for inclusion in the new statute. Drafting of a bill commenced in 2015/16 but is currently on hold until the conclusion of the 2017 WA State election.

South Australia (SA)

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 among 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).

In 2008 legislative amendments followed an independent review by the South Australia Government to reassess the structure of the Scheme.

The 2008 amendments included the introduction of work capacity assessments, Medical Panels, restrictions on redemptions and changes to weekly payments (commonly referred to as 'step-downs'). The Amendment Act also included a requirement for the Minister for Industrial Relations, to initiate a further independent review in 2011 to consider the impact of the 2008 changes.

In 2008 WorkCover commenced a review of all regulations supporting the Act. All SA 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 SA Government Gazette on 24 June 2010 and commenced on 1 November 2010.

The review (generally referred to as the Cossey Review) of the 2008 legislative amendments 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.

On 13 September 2011, the Government made a statement in relation to the Cossey Review to announce that it would continue to work on developing the Government's response, including consideration of recent court judgements and other reform proposals and working closely with employee and employer representatives, the WorkCover Board and Executive and other interested parties.

On 27 October 2012, the Premier announced the Workers' Compensation Improvement Project. Phase one outcomes included a new WorkCover Charter and Performance Statement signed on 19 August 2013, with a range of initiatives that were expected of WorkCover to place a greater focus on early intervention and return to work. These initiatives were intended to cap the growing unfunded liability. Amendments were also made to the *WorkCover Corporation Act 1994* in November 2013 to put the Board on a more commercial footing. Phase two of the Workers' Compensation Improvement Project was announced to include a root and branch recasting of the fundamental characteristics of the legislation.

On 30 October 2014 new legislation to reform workers' compensation in South Australia was passed by Parliament. The *Return to Work Act 2014* and the *South Australian Employment Tribunal Act 2014* replace the *Workers Rehabilitation and Compensation Act 1986* and establish the Return to Work scheme.

The Return to Work scheme is underpinned by the following key principles:

- a strong focus on early intervention, targeted return to work services and provision of retraining (where required)
- recognition that workers who are seriously injured require different services and support to those workers who are not seriously injured
- clearly articulated rights and obligations for all parties: workers, employers and the Corporation
- a simple and efficient dispute resolution process with an improved framework including clear boundaries and requirements for evidence-based decision making.

The Return to Work scheme became operational on 1 July 2015.

On 2 February 2015 the *WorkCover Corporation Act 1994* was amended to the *Return to Work Corporation of South Australia Act 1994*. These amendments arising from *the Return to Work Act 2014* provide for the name change of the Corporation.

On 6 February 2015 ReturnToWorkSA (RTWSA) was launched. RTWSA is responsible for insuring and regulating the Return to Work scheme. RTWSA continued to administer the WorkCover scheme until it was replaced by the Return to Work scheme on 1 July 2015. Section 203 requires the Minister to cause a review of the Act and its operation to be conducted on the expiry of three years from its commencement.

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

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

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 Whole Person Impairment of 30 per cent 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

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 per cent of Normal Weekly Earlings but increase its duration to 78 weeks and reduce the impact of the second step-down from 70 per cent to 80 per cent 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

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.

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:

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

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 per cent basic salary to 15 per cent 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 per cent and 19 per cent, to 20 years for workers with a WPI of between 20 per cent and 29 per cent and until the age of retirement for workers with a WPI of 30 per cent or more
- amend the first step-down to 90 per cent of NWE rather than 85 per cent 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 per cent 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 per cent WPI to 20 per cent 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.

2012 amendments

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 two and three of the Guidelines for the Assessment of Permanent Impairment (the Guidelines). The amendments also clarified that version two of the Guidelines took effect on and from 1 April 2011 to 30 September 2012 and version three 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.

2013 amendments

The *Workers Rehabilitation and Compensation Amendment (Fire-Fighters) Bill 2013* was passed by Parliament on 26 September 2013 and commenced operation on 21 October 2013.

The legislation establishes a rebuttable presumption that particular forms of cancer developed by career and volunteer firefighters are work related for the purpose of the Act. The amendments will make the process of claiming workers' compensation less cumbersome for firefighters and recognises that firefighters are at greater risk of developing certain types of cancers as a result of exposure to hazardous substances while performing firefighting activities. Under the presumption, if a career firefighter is diagnosed with one of the 12 cancers listed in the schedule, and served as a firefighter for the relevant qualifying period, it will be presumed that the cancer is an occupational disease and is therefore compensable. For volunteer firefighters there is an additional requirement that the person must have attended at least 150 exposure events within any five year period for brain cancer and leukaemia, and within 10 years for the remaining 10 cancers. This requirement ensures that the presumption only applies to volunteers who have had a significant level of exposure to the hazards of fire.

The legislation limits the operation of the presumption to diseases that occurred during the period of

employment or up to 10 years post retirement or resignation as a firefighter. It will only apply to firefighters, both career and volunteer, appointed or employed under the *Fire Service Act 1979.*

The Parliament endorsed an amendment to the Bill to require a review of the legislation after 12 months of operation and every 12 months thereafter. This will provide an opportunity to assess the fairness and effectiveness of the legislation and to take into account any developments in medical research.

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:

1. the person has an ARD, and
2. 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 two 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 2016 a compensation unit increased to $826.53) plus a further age-based payment (if under 80 years of age), and
- the worker is also entitled to have their reasonable medical expenses paid for by the scheme. However, when total medical expenses reach 125 compensation units 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 two 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 per cent 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 per cent 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, and
- 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, and
- 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:

- Worksafe Tas – Asbestos safety
- Tasmanian Asbestos Compensation – Information brochure
- Asbestos Compensation in Tasmania – A Guide

Northern Territory (NT)

The first workers' compensation statute introduced in the NT 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 1986* commenced on 26 April 2007 so employers are only required to maintain a workers' compensation policy in the NT when they employ workers with a 'State of Connection' to the NT. 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 NT 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 2007*. These Acts separated the work health and safety and rehabilitation and workers' compensation provisions of the previous *Work Health Act 1986* 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 1986* were transferred almost unchanged into the new *Workers' Rehabilitation and Compensation Act*.

2008

On 1 July 2008 the *Workplace Health and Safety Act* and parts of the *Workers' Rehabilitation and Compensation Act* came into effect.

Prior to taking effect however, the *Workplace Health and Safety Act* underwent a number of amendments. The amendments made 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 NT 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 *Workers' Rehabilitation and Compensation Act* on 30 June 2008, bringing the total number of approved insurers in the jurisdiction to five.

2012

The *Workers' Rehabilitation and Compensation Legislation Amendment Bill 2011* was passed in Parliament on 28 March 2012. The amendments came into effect 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:

- The person is paid to achieve a stated outcome; and
- The person has to supply the plant and equipment or tools of trade needed to carry out the work; and
- 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 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. 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.

2015

The *Workers' Rehabilitation and Compensation Legislation Amendment Bill 2015*, was tabled in February 2015, passed in March 2015 and came into effect 1 July 2015. The key amendments are:

Legislation name change

The name of the legislation has changed to 'Return to Work Act' and Regulations. The change is to reflect the primary objective of the legislation, which is to assist injured workers to return to work.

Presumptive legislation for firefighters and volunteers

Presumptive legislation has been introduced to make it easier for firefighters and volunteer firefighters to claim workers' compensation if they are diagnosed with one of the 12 cancers listed in the

legislation schedule. This change recognises that fire fighters are at greater risk of developing certain types of cancers as a result of exposure to hazardous substances while performing firefighting activities.

Definition of worker

The definition of worker has been aligned with the PAYG definition used by the Australian Taxation Office (ATO). This change will make it easier for employers and workers to identify who is covered for workers' compensation.

Increased period of compensation for older workers

This change recognised that Territorians are staying in the workforce beyond the pension age. The period of compensation for workers aged 67 years or older has increased from 26 weeks to 104 weeks, providing older workers with a more reasonable level of financial protection should they get injured at work.

Five year cap on benefits for less serious injuries

Under this change, workers who suffer a less serious injury will be limited to five years of compensation, with a maximum of one additional year for medical and other costs. This change does not affect workers who have suffered a more serious injury and have been evaluated as having a permanent impairment of 15 per cent or higher. These more seriously injured workers depending on work capacity may be entitled to compensation payments until pension age.

Increase in death and funeral benefits

The death benefit for the dependants of a deceased worker has increased from 260 times to 364 times the average weekly earnings. Based on the 2015 average weekly earnings figure of $1417.20, the death benefit will increase from $368 472 to $515 860.

Stroke and heart attack claims

Compensation will not be provided for stroke or heart attacks that are not caused by work. Compensation will be paid if it is established that a person's employment is the real, proximate or effective cause of the heart attack or stroke.

Capping the calculation for normal weekly earnings

During the first 26 weeks when a worker is unable to work, their compensation payments are paid at their normal weekly earnings. After 26 weeks, compensation payments are paid at 75 per cent of their normal weekly earnings. There is now a cap on the calculation of a worker's normal weekly earnings after 26 weeks to 250 per cent of the average weekly earnings ($3543). This provision will only affect very high income earners, and in such cases will provide incentive, for both the worker and the employer to focus on return to work.

Clarification on when compensation payments are reduced to 75 per cent of normal weekly earnings

The legislation has been amended to clarify that compensation payments to an injured worker are reduced to 75 per cent of their normal weekly earnings after receiving a total of 26 weeks of compensation payments, rather than the period of 26 weeks from the date they were injured.

The *Return to Work Legislation Amendment Bill 2015*, was tabled in June 2015, passed in August 2015 and came into effect on 1 October 2015. The key amendments are:

Payment of reasonable expenses for family counselling

This provision relates to broader counselling and support at an early stage, including in relation to a worker’s family to assist the process of rehabilitation. The amount payable will be to a maximum of 1.5 times Average Weekly Earnings (this is currently equal to $2125.80).

Reasonable payment for medical and rehabilitation costs during deferment

Where a decision is made to defer liability of a claim, there is a requirement on the employer to make weekly payments of compensation and, in the case of claims for mental stress, engage in rehabilitation.

Now for all deferred claims, payments for treatment and rehabilitation during the deferral period will ensure that a worker’s recovery is not compromised by lack of treatment or rehabilitation during that period. This benefit excludes hospital inpatient and associated surgical costs as well as costs of interstate evacuations.

Mental stress claims

The former defence to a mental injury claim was based on reasonable administrative action and reasonable disciplinary action.

Reasonable administrative action is now replaced with management action. Management action has been defined in the legislation and will include any communication in connection with identified actions.

Formal notice to be provided to the worker of any pending step down or cancellation

Formal notice is required to be provided to the worker of the pending step down (or cancellation), and the step down not to take effect until 14 days after the worker has been notified. This applies to all step downs 26 weeks, 260 weeks and 104 weeks (age).

Payment for legal advice at mediation

A mediator may recommend workers receive paid legal advice of and incidental to the mediation for an amount up to one times AWE (currently $1417.20). The entitlement is subject to approval by NT WorkSafe.

Access to a lawyer will not be provided as a right, however the mediator can recommend to the Authority that legal advice be paid for by the employer where the mediator believes it will facilitate the mediation. Examples would be a more complex matter or where a worker is mentally impaired.

Negotiated settlements

There is now provision for the finalisation of the claim by the payment of a lump sum through negotiated settlement.

The legislation requires a qualifying period of 104 weeks before a negotiated settlement. This will minimise the possibility of negotiated settlements preventing effective rehabilitation.

Any settlement will involve mandatory independent legal advice funded by the employer (insurer).

Financial advice funded by the employer (insurer) is to be provided on the request of the worker.

It will not apply to claimants that are catastrophically injured and covered by the NIIS.

Settlement of disputed claims

There is provision to allow for the settlement of disputed claims for compensation (whether disputed on a question of fact or law or both) and settlement of contested applications to the Work Health Court.

As with negotiated settlements, any settlement will involve mandatory independent legal advice funded by the employer (insurer) and financial advice at the request of the worker also to be funded by the employer (insurer). Any settlement within the first 104 weeks from injury will be subject to a six month cooling off period. In other words, the settlement is not binding until six months has elapsed.

Exclusion of journey claims

This provision excludes claims for all journeys to and from work. Journeys that are considered to be in the course of employment are not excluded. Examples are where the journey is to or from a workplace other than the worker’s normal workplace at the request of the employer or where the worker is required to work outside their normal hours of work and is paid for the time taken for the journey to or from work.

Enforcement of compulsory insurance provisions by ability to stop work

If an employer does not hold the necessary workers' compensation insurance policy there is the power to order the employer to stop work until such time as the situation is rectified.

Involvement of support persons at mediation

Mediators will now be able to consent to a person, who is not a legal representative, to represent a claimant during the mediation.

If the mediator considers that a claimant is not best equipped to fully present their own case and that the mediation will be best facilitated if assistance is provided by an advocate, then the mediator may consent to the claimant being represented by an advocate.

Improving return to work outcomes

To assist in improving return to work outcomes the legislation includes the following:

- The employer must produce a return to work plan, developed and agreed between the employer and worker for any injury that involves incapacity of more than 28 days.
- An employer will be unable to dismiss a worker for a period of six months following the date of injury unless during that period the worker ceases to be totally or partially incapacitated because of the injury.
- This is not to apply if the employer proves the worker was dismissed on the grounds of serious and wilful misconduct.

Latest Development

The Northern Territory has adopted the recommended list from the report "Deemed Diseases in Australia" as commissioned by Safe Work Australia, effective 1 July 2016 – see Return to Work Regulations, Schedule 2.

Australian Capital Territory (ACT)

In 1951 the ACT introduced the *Workmens' Compensation Ordinance 1951* to repeal the original 1946 Ordinance. With the advent of self-government in the ACT 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 1951* 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 ACT Scheme consistent with the objectives underpinning the earlier reform.

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 methodology from assessment against a limited table of maims to a Guide prepared with comprehensive criteria assessing impairment based on the 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 (now 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 Australia, Border Express, Australian air Express and K&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. This moratorium was lifted in December 2013.

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 until 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 ADF 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 (DVA), 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. DVA 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.

Review of the SRC Act 1988

On 24 July 2012, a review of the SRC Act review was announced. The SRC Act review was 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.

On 30 May 2013, the then Minister released the report from the review of the SRC Act. The report listed over 100 recommendations for modernising the SRC Act and Comcare scheme.

Self-insurance changes

On 2 December 2013, the Minister for Employment announced the lifting of a moratorium on new self-insured licensees entering the Comcare scheme. This enables private corporations to seek a declaration of eligibility to apply to self-insure under the SRC Act. A number of new self-insurers have entered the Comcare scheme since that date.

Note: See Chapter 1

Seacare coverage

On 22 December 2014, in *Samson Maritime Pty Ltd v Aucote* [2014] FCAFC 182 (the Aucote decision), the Full Court of the Federal Court held that the application provisions of the *Seafarers Act* operated to apply the Seafarers Act to seafarers employed by a trading, financial or foreign corporation on a prescribed ship, including ships engaged in intrastate trade. This is a substantially broader coverage than what has been historically understood by maritime industry regulators and participants.

While the decision did not specifically address the application provisions of the OHS (MI) Act, these provisions are similar to those of the Seafarers Act.

The *Seafarers Rehabilitation and Compensation and Other Legislation Amendment Act 2015* (the Act) was introduced to address the consequences of the Aucote decision. The Act commenced on 26 May 2016 and clarified the application of the Seafarers Act and OHS(MI) Act up until the date of commencement (26 May 2016). As such, the Act, as passed by the Parliament, only addresses the historical application of the Seacare scheme.

To address the coverage of the scheme going forward, the Seacare Authority has issued two multi-ship exemptions under section 20A of the Seafarers Act that (generally) exempt the employment of employees on any ship listed in those exemptions from the Seafarers Act if the ship is engaged in intrastate trade.

The former Assistant Minister for Employment also made two Ministerial Declarations in response to the Aucote decision: the Seafarers Rehabilitation and Compensation (Prescribed Ship — Intra-State Trade) Declaration 2015 (No. 2) and the Occupational Health and Safety (Maritime Industry) (Prescribed Ship or Unit — Intra-State Trade) Declaration 2015 (No. 2). These declarations provide that certain ships only engaged in intra-state trade are not prescribed ships (or units) for the purposes of the Seafarers Act and OHS (MI) Act. The declarations are due to cease in 2017.

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'.