



safe work australia

Comparison of Workers' Compensation Arrangements in Australia and New Zealand

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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 edition of the Comparison has been enhanced with new sections on permanent impairment, deemed occupational diseases and the treatment of superannuation for purposes of workers' compensation.

The Comparison provides background to the evolution of workers' compensation arrangements in Australia and New Zealand, and discusses the way that 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 table contained in this report provides a snapshot of workers' compensation arrangements as at 30 June 2009. Information taken from the 11th edition of the Comparative Performance Monitoring report covers the 2007-08 financial year and some jurisdictions have reported recent developments to the end of December 2009. However, because each jurisdiction may vary its arrangements from time to time, and because 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, the Victorian Workcover Authority produced this publication from 1993 to 2005 and the Australian Safety and Compensation Council produced it in 2006 and 2007. This edition and the 2008 edition have been produced by Safe Work Australia. 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.

Safe Work Australia

1. The evolution of, and recent developments in, workers' compensation schemes in Australia and New Zealand

1.1 Introduction

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.

1.2 The national perspective

In Australia, there are 11 main workers' compensation systems. Over time, each of the eight Australian States and Territories has developed their own workers' compensation laws. 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*; 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*.

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, 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 extended 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 occupational 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.

1.3 New South Wales

New South Wales introduced the *Workmen's Compensation Act 1910*, applying 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 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 ten 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 that commenced on 1 January 2006. The contracts made Agents more accountable for delivering good Scheme outcomes and improved service standards.

Recent Developments (New South Wales)

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 require payment of the lump sum to be made to a deceased worker's estate where they leave no financial dependents. Previously, only financial dependents 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 have 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.

1.4 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, occupational health and safety reforms and a new dispute resolution system.

The Act has been constantly updated with major reforms legislated in:

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.

Recent Developments (Victoria)

Review of the Accident Compensation Act and associated legislation

On 10 December 2007, the Victorian Minister for WorkCover, the Hon Tim Holding MP commissioned Mr Peter Hanks, QC to undertake a review of the *Accident Compensation Act 1985* and associated legislation. In announcing the review, Minister Holding indicated the Government's wish 'to reduce the administrative burden on employers, improve the support and services provided to injured workers and improve the overall efficiency of the accident compensation system'.

Mr Hanks released a discussion paper in March 2008 which provided information and raised issues about Victoria's workers' compensation legislation. Over 150 submissions from organisations and members of the public were received during the Review's public comment period.

The final report ('the Hanks Report') was released on 26 September 2008. The Hanks Report, together with a Guide to the Report, can be downloaded at <http://www.compensationreview.vic.gov.au/wps/wcm/connect/wsinternet/Accident+Compensation/Final+Report/>

On 17 June 2009 the Premier, the Hon. John Brumby, announced the Government's Response to the 151 recommendations in the Hanks Report which can be downloaded at <http://www.compensationreview.vic.gov.au/wps/wcm/connect/e1bb29004071e3a2a373ffe1fb554c40/170609+Government+Response+Table+v2.pdf?MOD=AJPERES&CACHEID=e1bb29004071e3a2a373ffe1fb554c40>

Improvements to benefit both workers and employers and aimed at enhancing the scheme as a whole were introduced into Parliament in December 2009 with the majority of changes likely to come into effect in April 2010.

1.5 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.

Recent Developments (Queensland)

Following a limited review of the Queensland workers’ compensation scheme in 2007, the Queensland Government was recommended a package of improved worker benefits. The package was aimed at enhancing benefits for longer-term injured workers and reducing the duration of workers’ compensation claims by better facilitating early return to work. The *Workers’ Compensation and Rehabilitation and Other Acts Amendment Act 2007* implemented the recommendations of the review by:

- removing the one and two year step-down of benefit entitlements and increasing weekly benefits to 75 per cent of normal weekly earnings or 70 per cent of Queensland Ordinary Time Earnings (whichever is greater) for the period 26 weeks to five years
- increasing the maximum additional lump sum compensation payable to \$218 400, and
- increasing access to additional lump sum compensation by reducing the threshold level of work-related impairment from 50 per cent to 30 per cent.

The Act also gave effect to a number of minor amendments to improve the operation of Queensland’s workers’ compensation scheme including breaking the nexus between statutory benefits paid and death benefits, and streamlining certain procedures for insurance, compensation and damages.

In 2008, an amendment to the *Workers’ Compensation and Rehabilitation Act 2003* was made to provide entitlements for dependants in cases where a deceased worker had already received lump sum compensation or damages for a latent onset injury. The entitlements are:

- a new lump sum entitlement of 15 per cent of the maximum death benefit for dependants of a worker who had received a payment of lump sum compensation or damages for a latent onset injury and who subsequently died,
- in the same situation, reasonable funeral expenses of two per cent of the maximum death benefit for dependants, and
- giving insurers the discretion to pay these new entitlements at the same time as the insurer pays the worker lump sum compensation for the injury.

These amendments were aimed at assisting the families of workers with terminal, work-related latent onset diseases, such as mesothelioma.

Previously, where a sufferer died before claiming their full lump sum entitlement, dependent family members received full death benefits. However, dependants of workers who had been paid their full lump sum entitlement before their death received no death benefits or funeral expenses when the worker died.

1.6 Western Australia

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.

Recent Developments (Western Australia)

Premium rates for 2008-09 were gazetted on 13 May 2008 and came into effect on 30 June 2008. The revised rates resulted in a 14.4 per cent reduction in average recommended premium rates, from 1.849 per cent for 2007-08 to 1.582 per cent for 2008-09.

WorkCover WA released its annual statistical report covering workers' compensation claim statistics for the period 2003-04 to 2006-07 on 29 October 2008. The statistical report is part of a series of reports that provide information on the incidence of accidents, injuries and diseases in Western Australia. In addition to providing an overview of workers' compensation in Western Australia, the report provides detailed information on the characteristics of lost-time claims to assist individuals and organisations in their endeavours to prevent workplace injury and to minimise the social and economic impact of claims.

Revised fees for medical and allied health treatment services in the Western Australian workers' compensation system came into effect from 18 December 2008. The revisions brought about a 4.78 per cent increase to fees derived through application of the medical and allied health fees composite index, which is used by WorkCover WA for annual indexation purposes.

Exercise physiology was recognised as an "approved treatment" under the *Workers' Compensation and Injury Management Act 1981* from 18 December 2008. The definition of "exercise physiologist" inserted into the *Workers' Compensation and Injury Management Regulations 1982* requires exercise physiologists to demonstrate current accreditation through the Australian Association for Exercise and Sports Science in order to be recognised for the purposes of the Act.

Following the terrorist attacks of 11 September 2001 in the USA, reinsurers around the world withdrew coverage for acts of terrorism. As a result, the *Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001* (the Terrorism Act) was introduced in WA to permit insurers to exclude liability for acts of terrorism from workers' compensation policies. The Terrorism Act has a 'final day', or sunset clause, contained in its subsidiary legislation, after which time it will cease to operate. On 6 January 2009 amendment regulations were published in the *Government Gazette* to extend the 'final day' for a further three-year period, from 31 December 2009 to 31 December 2012.

On 25 March 2009 the Minister for Commerce, the Hon Troy Buswell, announced a review of workers' compensation legislation in Western Australia. WorkCover WA has established both internal and external Stakeholder Reference Groups to assist in the review process.

The review aims to:

- create an improved structure for the Act, to enhance the readability and consistency of the legislation
- improve the efficiency of the legislation to respond to changing circumstances
- address anomalies which have been identified through past experience in the operation of the Act, including matters raised in the evaluation of the 2005 reforms by stakeholders, and
- address specific policy issues, such as age discrimination, as identified by stakeholders.

A final report, incorporating feedback from the External Reference Group, will be provided to the Minister for Commerce by the end of 2009.

1.7 South Australia

South Australia introduced the *Workmen's 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 which led to the drafting of new legislation being considered by Parliament in 1986 and the establishment of WorkCover in September 1987.

Amendments to the *Workers' Rehabilitation and Compensation Act 1986*, (WRC Act) passed in State Parliament in December 1992, abolished access to common law on 3 December 1992. The abolition was brought about by two facts; that workers were not, in most cases, receiving any significant award of damages and were incurring substantial costs, and secondly, that a common law award which required the worker to prove negligence on the part of an employer was inconsistent with the concept of no fault legislation such as the WRC Act.

In 1994 the *Workers Rehabilitation and Compensation (Administration) Amendment Act 1994* was passed by the new State government. The amendments included:

- *Compensability of psychiatric disabilities:*
The test for employment contribution was strengthened to 'substantial cause'.
- *Commutation / Redemption*
The liability to make weekly payments could, on application of the worker, be commuted to a liability to make a capital payment. WorkCover had absolute discretion as to whether it allowed commutation. A commutation discharged all liability to make weekly payments to which the commutation relates. It was not possible to claim that a residual liability remains.
This was a new provision aimed at tightening eligibility for commutations. Beforehand, a worker (or dependent spouse) could ask WorkCover to commute his/her entitlements to weekly payments into a lump sum.
- *Hearing Loss*
Hearing loss had to be a minimum of 5% to be compensable. Beforehand, there was no threshold to compensability for hearing loss.

On 26 October 1995 the then State government passed the *Workers Rehabilitation And Compensation (Dispute Resolution) Amendment Act 1995*. The objective of those amendments was to apply the principles of 'early intervention, conciliation, removal of

duplication, administrative, arbitral and judicial efficiency and the minimisation of costs' in the dispute resolution process. These principles were balanced by 'the overriding need to ensure equity and natural justice in decision making, and no net increase in cost to the WorkCover scheme...'. There were some further amendments made to that Amendment Act in early 1996, with the overall amendment package commencing on 3 June 1996.

The amendments aimed to endorse the principles of the 1994 Industry Commission report into workers compensation systems in Australia. This report advocated 'reliance on non-adversarial dispute resolution procedures (with the emphasis on conciliation and arbitration, although legal representation should not be excluded).' Judicial review was intended to be a last resort. Procedures were intended to be characterised by a prompt initial decision subject to non-judicial review by an independent internal arbitrator in the first instance, before appeal to external arbitration and/or resort to the courts.

Major features of the 1996 reforms included:

- abolition of the internal reviews and appeals process
- introduction of initial reconsideration
- a strengthened conciliation and arbitration framework
- introduction of the Workers Compensation Tribunal, to preside over most stages of the dispute process.

In 1995, the *Workers Rehabilitation and Compensation (Miscellaneous Provisions) Amendment Act 1995* made a number of amendments which came into effect in 1995 and 1996. The following arrangements were included among its provisions:

- It repealed and replaced section 6 of the Act on cross-border arrangements specifically tightening the requirement for a 'nexus' between a worker's employment and South Australia. In particular the new test included a requirement that if a worker usually works in no state or no one state, he/she had to live in South Australia to establish a nexus to that state. This requirement did not exist in other states and territories, leading to an inconsistency that lasted until 2007.
- Rehabilitation and return to work plans were introduced for injured workers in receipt of income maintenance and who were likely to be incapacitated for more than three months and who had some prospect of returning to work. The insertion of section 28A gave statutory recognition to rehabilitation and return to work plans. It held that a plan must be prepared if the worker is (or is likely to be) incapacitated for more than three months, that consultation must occur between the worker and the relevant employer and that plans are reviewable
- Rehabilitation programs and plans needed to comply with the prescribed standards.
- Amendments to Section 30A were made, expanding coverage for psychiatric disabilities to cover all forms of psychiatric disability. Beforehand a more limited range were covered. Note that this amendment did not change the basic requirement, introduced in 1994, for employment to be a 'substantial cause' of a psychiatric disability.
- Compensation for medical expenses under section 32 was also amended to require the regulation of treatment protocols and scales of medical and allied health charges. Beforehand, such protocols only needed to be gazetted.
- Two year review processes under section 35(2) were amended. Rather than income maintenance after two years taking into account only what a worker could earn in suitable employment, income maintenance could be adjusted based on the amount a worker had the capacity to earn in suitable employment. The onus was then placed on workers to prove that they are in effect unemployable because employment of the relevant kind is not commonly available for a person in the worker's circumstances, irrespective of the state of the labour market.

- Other modifications included changes to discontinuance provisions relating to age and retirement, the introduction of the concept of breaches of the 'obligation of mutuality' resulting in tougher discontinuance provisions, the replacement of commutations with the ability to make a redemption of liability by a capital payment and an increase in employers' liability to pay the worker from the first week to two weeks.
- Employer obligations were relaxed so that small employers were required to keep a position available for one year only and sexual incapacity lump sums were eliminated.

On 26 September 2006, the [Workers Rehabilitation & Compensation \(Territorial Application of Act\) Amendment Act 2006](#) was passed in Parliament. The changes became effective on 1 January 2007. The legislation brought South Australia's cross-border provisions into line with those of the other states and territories, as part of a national model that featured two aspects:

- employers only need to register each worker in one scheme only; and
- every worker is covered by a scheme (no worker falls through the cracks).

Limited retrospectivity and 'ex gratia' payment provisions were included in the amendment legislation to ensure workers injured before 1 January 2007 who were previously not eligible were now covered. These particular provisions operated between 13 September 2007 and 12 March 2008.

The [Statute Amendment \(Domestic Partners\) Act 2006](#) ('Domestic Partners Act'), which came into force on 1 June 2007, amended the WRC Act and numerous other Acts to provide for recognition of certain domestic relationships. For the purposes of this Act, a person is considered to be the domestic partner of a worker if he or she lives with the worker in a close personal relationship and the person has been so living with the worker continuously for the preceding period of three years (or related variations).

Specifically, the Act includes a definition of 'close personal relationship' within section 3 of the WRC Act, to mean the relationship between two adult persons (whether or not related by family, and irrespective of their gender) who live together as a couple on a genuine domestic basis. In circumstances where compensation is payable upon death, the WRC Act has been expanded to include references to domestic partners, not only spouses.

Workers Rehabilitation and Compensation (Claims and Registration) Variation Regulations 2007 came into effect from 1 June 2007. The amended regulation extended scheme coverage to all licensed jockeys while they are engaged in 'thoroughbred riding work'. Prior to that date, only apprentice jockeys with a contract of employment with a trainer, or jockeys who were working directors of their own incorporated company were covered.

On 17 June 2008, the South Australian Parliament passed the most significant legislative amendments to the WorkCover Scheme since 1986. The amendments affected both the WRC Act and the *WorkCover Corporation Act 1994*.

The legislation followed an independent review by the South Australian 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% and 2.75% by 1 July 2009, and
- the Scheme would be fully funded as soon as practicable.

The new legislation aims to assist in significantly 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 affect a number of areas, and the timetable for implementation varied.

Guides to the changes have been published and are available from the WorkCoverSA website (www.workcover.com).

Recent Developments (South Australia)

WorkCoverSA Regulation Review

WorkCoverSA is currently undertaking a review of all the regulations supporting the WRC Act. All South Australian regulations expire after 10 years in force (*Subordinate Legislation Act 1978*). This expiry may be postponed by regulation by up to two years at a time and up to four years overall.

A number of WorkCover-administered regulations will soon expire. This, coupled with the need to develop new regulations to support the 2008 legislative reforms, have led to the requirement to review many regulations administered by WorkCover.

Submissions received during the first consultation process (October 2008 to February 2009) have been analysed and formed the basis of the *Regulation Review Proposal Paper* which makes approximately 33 sets of recommendations for change. The WorkCover Board has approved the recommendations and the Minister for Industrial Relations, the Hon Paul Caica, has referred the paper to the Workers Rehabilitation and Compensation Advisory Committee for independent consideration and advice.

Subject to Ministerial approval, WorkCoverSA anticipates seeking Cabinet approval to draft new regulations in late 2009. It will then undertake approximately eight weeks of further stakeholder consultation on the draft regulations early in 2010.

During analysis of stakeholder submissions, WorkCoverSA identified the deeming provisions as requiring more targeted stakeholder consultation. These provisions effectively 'deem' certain workers to be covered by WorkCoverSA where they may not have been otherwise, or vice versa. A separate deeming provisions proposal paper was issued in late 2009. It is anticipated that any recommendations on deeming provisions will be merged back into the main review in early 2010. At this time, WorkCover anticipates that an overall new set of regulations will commence on 1 July 2010.

Updates will be made available on the website at:

http://www.workcover.com/site/workcover/workcover/workcoversa_regulation_review.aspx?str=review

New levy payment system

As part of the implementation of major legislative reform WorkCover SA is introducing a new levy payment system effective from 1 July 2009.

The system now requires employers to pay their levy in advance rather than in arrears. The changes are part of the South Australian Scheme's commitment to meet national scheme harmonisation objectives, and brings the state's provisions into line with every other Australian jurisdiction, where levy is paid in advance.

Another change is that the minimum levy is now set by the WorkCover Board, which has increased the minimum levy (exclusive of GST) from \$50 to \$200, phased in over a three-year period. The minimum levy applies to all employers who are required to register and pay

levy. Employers are exempted from registration where the total remuneration payable by the employer to their workers in a calendar year does not exceed \$10 200 indexed – for 2009 the amount is \$10 800).

Restrictions on redemptions

From 1 July 2009, WorkCover's use of redemptions was greatly restricted via a legislative amendment that was part of the 2008 reforms. From 1 July 2009, redemptions have only been allowed where it will not undermine the Scheme's primary focus on return to work, specifically in circumstances 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
- 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 will apply to *all* claims.

1.8 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),
- provision 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.

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.

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 benefits model 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 dependents of deceased workers, and
- increases in the levels of step-downs in weekly payments.

In 2004 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 Mr Rutherford's report, the legislation was amended to retain the first step-down provision of 85 per cent of normal weekly earnings but increase its duration to 78 weeks, and lift the second step-down from 70 per cent to 80 per cent of normal weekly earnings. 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.

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.

Recent Developments (Tasmania)

WorkCover 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 completed in 2007, although some minor changes were made to the model in 2008 as a result of concerns from stakeholders.

Review of the Tasmanian Workers Compensation System (Clayton Report)

In July 2006 the Minister released terms of reference for a review of the workers' compensation system. Mr 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 per cent whole person impairment threshold.

The Report was released for public comment in January 2008 and includes 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 whole person impairment (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 section 74 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.
- Weekly benefit for dependent children (now 10% of the Basic Salary - \$56.47 per week) be increased to 15% 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.
- 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 section 134AB 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 reports 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.

Drafting of the new legislative framework commenced in January 2009. The Government released its response to the Clayton Report in July 2009. The reform package included some variations to the Clayton recommendations and two other significant changes that were not addressed in the Clayton Review:

1. changes to the timing and level of weekly payment step-downs, and
2. reduction in the common law threshold from 30% whole person impairment to 20%..

Legislation to implement these changes and to provide the legislative framework for the WorkCover Return to Work and Injury Management Model was passed in late 2009. The changes will not commence until 1 July 2010. ‘

1.9 Northern Territory

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

A review of the legislation in 1984 resulted in the *Work Health Act 1986*, which contained provisions for both occupational health and safety (OHS) 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.

Recent Developments (Northern Territory)

‘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.

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 OHS 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*.

A series of other amendments to the *Work Health Act* occurred during 2007, took effect on 1 July 2008 as parts of the *Workers Rehabilitation and Compensation Act* commenced. These 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, then the employer/insurer must accept the claim
- 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 section 121(1) of the *Work Health Act* on 30 June 2008, bring the total number of approved insurers in the jurisdiction to five.

1.10 Australian Capital Territory

In 1951 the Australian Capital Territory introduced the *Workmen's 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 *Workmen's 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 ACT 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 ACT Scheme that are intended to achieve the objectives of the 2007 Review.

Workers Compensation (Default Insurance Fund) Amendment Act 2009

This Act was passed by the ACT 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 ACT.

Workers Compensation (Default Insurance Fund) Amendment Act 2009 (No 2)

This Act 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.

Workers Compensation Amendment Act 2009

This Act was passed by the ACT 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 ACT private sector workers' compensation scheme (the ACT Scheme)
- implement the National Framework for the Approval of Workplace Rehabilitation Providers (the Framework) developed by the Heads of Workers' Compensation Authorities (HWCA), and
- 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.

It should be noted that workers employed by the Australian Capital Territory Government are covered by the Commonwealth's *Safety, Rehabilitation and Compensation Act 1988*.

1.11 The Commonwealth

In 1912, the Commonwealth introduced the *Commonwealth Workmen's Compensation Act 1912* to provide compensation for Commonwealth workers. Before then, compensation was paid to widows and orphans of deceased Commonwealth officers under the *Officer's 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.

However, the introduction of the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) 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 whole person impairment concept.

In 1992 the SRCA was amended to provide for 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 which had no previous connection to the Commonwealth, other than that it was in competition with Telstra.

By June 2009 there were 29 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&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.

The media release added that: 'companies that have 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 provides appropriate OHS and workers' compensation coverage for workers employed by self-insurers. In announcing the outcome of the review, the Minister foreshadowed that the Government will seek to extend the moratorium on licensees seeking to join the scheme until 2012, conditional upon states and territories adopting harmonised OHS laws.

The *Seafarers Rehabilitation and Compensation Act 1992* sets out similar provisions for those covered under the Seacare scheme.

In 2004, the *Military Rehabilitation and Compensation Act 2004* (MRCA) 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 SRCA and the *Veterans' Entitlements Act 1986* (VEA).

The Military Rehabilitation and Compensation Commission (MRCC) regulates the scheme and with the assistance of the Department of Veterans' Affairs (DVA), administers it. The types of compensation are based on the SRCA and VEA provisions.

Under the MRCA, DVA provides rehabilitation, treatment and compensation for current (in conjunction with the relevant Service Chief) or former Australian Defence Force 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 the Seacare or Military Rehabilitation and Compensation scheme (MRCS) unless specifically stated.

Recent Developments (Commonwealth)

Changes to the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) came into effect on 13 April 2007. In summary, the amendments seek to:

- strengthen the required connection between work and eligibility for workers' compensation, particularly in relation to disease and psychological claims so that only significant contribution by work will be accepted
- remove workers' compensation coverage for journeys between residence and usual place of employment and from recess breaks away from the place of employment where there is a lack of employer control over activity, and

- provide for claimants who are no longer employed by the Commonwealth (or a licensee) to have their capacity to work outside Commonwealth (or licensee) employment to be taken into account when calculating incapacity benefits.

A number of the amendments were also beneficial to employees such as an increase to funeral benefits (to \$9000) and an increase to weekly benefits paid to retired employees. In 2009 the Government increased the lump sum death benefit to \$400 000 and backdated this to May 2008.

The Government has foreshadowed a reintroduction of off-site recess break cover.

1.12 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 legislation became the first in a long line of amendments that eventually led to 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 1992.

In 1998 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 2001* (IPRC Act), which increased the emphasis on injury prevention and rehabilitation.

Recent Developments (New Zealand)

The IPRC Act came into effect on 1 April 2007.

This legislative amendment to the IPRC Act 2001 established a new merged Work Account that incorporates 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 also 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 better reflect the intention of this cover.

The *Injury Prevention, Rehabilitation, and Compensation Amendment Act 2008* was passed on 28 June 2008. The key changes contained in the Amendment Act are outlined in the table below:

• Amendment	• More information about the changes
• Changes to the cover criteria for work-related gradual process, disease, and infection	<ul style="list-style-type: none"> • Simplification of the existing three-step test of causation to provide greater certainty of cover for clients with these conditions • Clarification that the responsibility and cost for investigating work-related gradual process claims rests with Accident Compensation Corporation (ACC)
• Provide cover for mental injury	• This means that, for example, a train

<ul style="list-style-type: none"> Amendment 	<ul style="list-style-type: none"> More information about the changes
<p>caused by exposure to a sudden traumatic event in the course of employment</p>	<p>driver who hits someone on the tracks, or a bank worker who witnesses the shooting of a colleague and go on to develop a mental injury will now receive cover</p> <ul style="list-style-type: none"> The mental injury must be clinically significant, not just temporary distress
<ul style="list-style-type: none"> Improvements to eligibility and entitlement provisions for weekly compensation 	<ul style="list-style-type: none"> Better access to weekly compensation for clients who are injured while temporarily between jobs Improvement of the assessment of long-term weekly compensation for non-permanent employees and make the calculation easier to understand Simplification of the abatement of weekly compensation Increase access to the minimum full-time earner rate for employees Increase the rate of weekly compensation paid for clients in receipt of loss of potential earnings.
<ul style="list-style-type: none"> Improved access to vocational rehabilitation 	<ul style="list-style-type: none"> Removal of the upper age limit for vocational rehabilitation Provide ACC with discretion to extend the current three-year limit where longer periods of vocational rehabilitation may be required. The Amendment Act also introduced a requirement for occupational assessors to consider a person's pre-injury earnings when identifying suitable work types
<ul style="list-style-type: none"> Amendments in relation to minor policy issues together with some technical changes 	<ul style="list-style-type: none"> Repealed disentitlements for wilfully self-inflicted injuries Provided nurse practitioners with the ability to determine incapacity and undertake certain assessments for ACC purposes Changes to the due date for levy payment

2. Schemes at a glance

This section provides a summary of how each jurisdiction's workers' compensation scheme operates and the benefits injured workers may be entitled to receive when a workplace injury is sustained. In-depth detail on the key features of workers' compensation is examined further in the following chapters of the Comparison.

2.1 Jurisdictional responsibility for workers' compensation

Table 2.1 Agencies responsible for overseeing workers' compensation in each jurisdiction as at 30 June 2009

Jurisdiction	Policy	Premium	Claims	Current legislation	Disputes
New South Wales	WorkCover NSW	WorkCover NSW	7 private sector agents	<i>Workplace Injury Management and Workers Compensation Act 1998</i> and <i>Workers Compensation Act 1987</i>	Workers Compensation Commission
Victoria	Victorian WorkCover Authority (WorkSafe Victoria)	Victorian WorkCover Authority	6 private sector agents and self insurers	<i>Accident Compensation Act 1985</i> and <i>Accident Compensation (WorkCover Insurance) Act 1993</i>	Victorian WorkCover Authority, Accident Compensation Conciliation Service (ACCS), Magistrates' or County Court
Queensland	Department of Justice and Attorney-General	WorkCover Queensland	WorkCover Queensland and self insurers	<i>Workers' Compensation and Rehabilitation Act 2003</i>	Q-COMP, Industrial Magistrate, Industrial Relations Commission, Industrial Court
Western Australia	WorkCover WA	Insurers subject to WorkCover WA oversight	8 private sector insurers, 27 self-insurers (exempt employers) and the Insurance Commission of Western Australia.	<i>Workers' Compensation and Injury Management Act 1981</i>	Dispute Resolution Directorate, Commissioner, District Court
South Australia	WorkCoverSA	WorkCoverSA	1 private sector agent	<i>Workers' Rehabilitation and Compensation Act 1986</i> and <i>WorkCover Corporation Act 1994</i>	Workers Compensation Tribunal

Jurisdiction	Policy	Premium	Claims	Current legislation	Disputes
Tasmania	Department of Justice and WorkCover Tasmania	Licensed private sector insurers subject to WorkCover Tas oversight	8 private sector insurers	<i>Workers' Rehabilitation and Compensation Act 1988</i>	Workers Rehabilitation and Compensation Tribunal, Supreme Court
Northern Territory	Department of Justice	Private sector agents	5 private sector insurers	<i>Workers Rehabilitation and Compensation Act 2008</i>	NT WorkSafe coordinate independent mediation, Work Health Court
Australian Capital Territory	Chief Minister's Department - Office of Industrial Relations	Private sector agents	7 approved insurers 8 self-insurers	<i>Workers' Compensation Act 1951</i>	Conciliation, arbitration, Magistrates Court
Commonwealth	Comcare: Department of Education, Employment and Workplace Relations	Comcare	Comcare/Self-insurers and their agents	<i>Safety, Rehabilitation and Compensation Act 1988</i>	AAT, Federal Court
	Seacare: Department of Education, Employment and Workplace Relations	n/a	Employers/insurers	<i>Seafarers Rehabilitation and Compensation Act 1992</i>	AAT, Federal Court
	MRCS: Military Rehabilitation and Compensation Commission	n/a	DVA	<i>Military Rehabilitation and Compensation Act 2004</i>	DVA, Veterans' Review Board, AAT, Federal Court
New Zealand	Department of Labour	Accident Compensation Corporation	Accident Compensation Corporation	<i>Injury Prevention, Rehabilitation, and Compensation Act 2001</i>	Accident Compensation Corporation, mediation, Dispute Resolution Services Limited, court system

2.2 Workers' compensation – key features of schemes

Table 2.2 - Synopsis of all of the jurisdictions' workers' compensation schemes

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'th ⁹	New Zealand
Employees covered for workers' compensation 2007-08 ¹	3 022 660	2 407 460	1 782 360	1 011 710	703 980	207 280	106 810	117 750	381 820 Seacare: 4020	1 597 830 ⁶
Number of serious claims with 1 week or more incapacity 2007-08 ¹	42 730	24 630	32 480	13 020	9630	3330	1420	1370	2420 Seacare: 90	24 655
Incidence of serious claims per 1000 employees 2007-08 ²	14.1	10.2	18.2	12.9	13.7	16.1	13.3	11.6	6.3 Seacare: 22.4	15.4
Compensated deaths per 100 000 employees 2007-08 ³	1.4	1.8	4.4	2.1	1.1	3.4	9.4	0.0	6.0 Seacare: 0	4.7
Scheme funding	Hybrid fund	Hybrid fund	Central fund	Privately under-written	Central fund	Privately under-written	Privately under-written	Privately under-written	Central fund Seacare: Privately Under-written	Central fund
Standardised Average Premium Rate ⁴	1.88% 2007/08 2.11%	1.44% 2007/08 1.58%	1.09% 2007/08 1.13%	1.27% ⁷ 2007/08 1.59% ⁷	2.84% 2007/08 2.81%	1.49% 2007/08 1.77%	1.81% 2007/08 1.81%	2.23% 2007/08 2.58%	1.15% 2007/08 1.20%	0.89% 2007/08 0.93%

Comparison of Workers' Compensation Arrangements Australia and New Zealand 2009

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'th ⁹	New Zealand
	2006/07	2006/07	2006/07	2006/07	2006/07	2006/07	2006/07	2006/07	2006/07 Seacare: 4.71% 2007/08 5.41% 2006/07	2006/07
Standardised Funding Ratio ^{5,8}	119% 2007/08	126% 2007/08	195% 2007/08	139% 2007/08	61% 2007/08	131% 2007/08	112% 2007/08	Not available	125% 2007/08	93% 2007/08
Excess/ Unfunded⁹ (30 June 09)	\$1482m unfunded	\$1.557 billion excess	\$1.22 billion excess	Not available	\$843m unfunded	Not available	Nil	Not available	\$157m excess	NZ\$3.6m excess
Access to Common Law	Limited	Limited	Yes	Limited	No	Limited	No	Unlimited	Yes for 3 rd Party Limited against employer / other employee	No

1 Source: Workplace Relations Ministers' Council, Comparative Performance Monitoring Report, eleventh edition, December 2009 (Appendix Table 1)

2 Source: Workplace Relations Ministers' Council, Comparative Performance Monitoring Report, eleventh edition, December 2009 (Indicator 5)

3 Source: Workplace Relations Ministers' Council, Comparative Performance Monitoring Report, eleventh edition, December 2009 (Indicator 10, Appendix Table 1)

4 Source: Workplace Relations Ministers' Council, Comparative Performance Monitoring Report, eleventh edition, December 2009 (Indicator 15)

5 Source: Workplace Relations Ministers' Council, Comparative Performance Monitoring Report, eleventh edition, December 2009 (Indicators 18a, 18b)

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

7 The WA rate is recommended, insurers are able to discount or load the recommended rate.

8 Assets and liabilities for centrally funded and privately underwritten scheme are calculated differently, see 'Scheme funding ratio'.

9 Compare data only, unless otherwise stated. Includes ACTPS.

2.3 Definition: injury

The definition of what constitutes an injury and what contribution the employment must have to it differs between the jurisdictions.

Table 2.3 – Definition of injury and contribution of employment as at 30 June 2009

	Definition of 'injury' for purposes of coverage	Employment contribution
New South Wales	'... personal injury arising out of or in the course of employment ...'	No compensation is payable under this Act in respect of an injury unless the employment concerned was a substantial contributing factor to the injury
Victoria	'... an injury arising out of, or in the course of, any employment ...'	A significant contributing factor for heart attack or stroke, disease, a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease
Queensland	'... a personal injury arising out of, or in the course of, employment ...'	Significant contributing factor
Western Australia	'... a personal injury by accident arising out of or in the course of the employment ...'	To a significant degree (for diseases only)
South Australia	'... a disability is compensable if it arises from employment.'	'... not compensable unless it is established on the balance of probabilities that it arises from employment.' Substantial cause (for psychiatric disabilities only) 'Contribution' required for secondary and unrepresentative disabilities, and diseases.
Tasmania	'An injury, or a disease, arising out of, or in the course of employment'	Employment is 'the major or most significant factor' (for diseases only)
Northern Territory	'... a physical or mental injury ... out of or in the course of employment ...'	To a material degree (for diseases and gradual process)
Australian Capital Territory	'a physical or mental injury...includes aggravation, acceleration or recurrence of a pre-existing injury...arising out of, or in the course of, the worker's employment'	A substantial contributing factor
Commonwealth	SRCA '... 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) ...' MRCA: 1. '...any physical or mental injury	To a significant degree (for diseases) Seacare: To a material degree (for disease) MRCA: Must be a <i>service injury</i> or <i>service disease</i> as defined (refer MRCA section

	Definition of 'injury' for purposes of coverage	Employment contribution
	<p>(including the recurrence of a physical or mental injury).'</p> <p>2. (being an aggravation of an injury)</p> <p>3. (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;'</p> <p>4. (being an aggravation of a disease) '...the aggravation of such an ailment, disorder, defect or morbid condition;'</p>	27, subsections 29(1) and (2) and section 30).
New Zealand	'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'	No requirement (except for work-related gradual process, disease, or infection suffered by the person)

2.4 Journey claims

All jurisdictions provide workers' compensation coverage for journeys undertaken for work purposes, with only some jurisdictions providing coverage for journeys to and from the workplace.

Table 2.4 – Coverage of journey claims as at 30 June 2009

Jurisdiction	Journey to and from work	Journey undertaken for work purposes
New South Wales	Yes (some restrictions)	Yes
Victoria	No (journeys are covered under separate statutory no-fault transport accident scheme)	Yes (some restrictions)
Queensland	Yes (some restrictions)	Yes
Western Australia	No	Yes
South Australia	Generally no. Only in very limited circumstances are journeys covered	Yes
Tasmania	No (some exceptions)	Yes
Northern Territory	Yes (some restrictions)	Yes
Australian Capital Territory	Yes	Yes
Commonwealth	Comcare: No (some exceptions)	Comcare: Yes

Jurisdiction	Journey to and from work	Journey undertaken for work purposes
	Seacare: Yes MRCS: Yes	Seacare: Yes MRCS: Yes
New Zealand	Yes (some restrictions)	No

2.5 Summary of benefits

Important notes:

- The level and degree of entitlements in the accompanying tables are maximum or minimum amounts for illustrative purposes. It is important to note that these amounts will not automatically apply to every injured employee. Similarly, not every injured employee will have his or her entitlement limited to one component.
- Amounts of compensation, other than for lump-sum payment to dependants in the case of work related death or permanent impairment, will be based on the degree of financial loss a person has suffered as result of a work related injury, and the amount of financial loss, including lost income, is determined differently in each jurisdiction.
- It must be noted that each component described below represents only one part of an overall entitlement to workers' compensation. The information should not solely be used to assess the overall level of benefits available to injured employees in each jurisdiction.
- There are many exceptions to the benefits quoted below, so these figures should only be taken to be applicable in the majority of cases.

2.5.1 Incapacity benefits and step downs

Each scheme provides (within limits) for a period of near-full income replacement of pre-injury earnings for workers who cannot earn. Table 2.5 lists this period for each jurisdiction.

Income replacement payments, also known as weekly 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. There is a range of entitlements across the jurisdictions, and Table 2.5 also shows the final step-down arrangements. In almost all arrangements detailed provisions are made to further reduce the amounts of income replacement based on an injured person's capacity to earn.

Table 2.5 – Summary of incapacity payments as at 30 June 2009

Parameter	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	Cth	New Zealand
100% wage replacement (no. of weeks)	26	13 (95% replacement)	26	13	13	13	26	26	45	week 2-5: 80% of short-term calculation
Final step-down (After week . . .)	26	13	104	13	26	78	26	26	45	Week 5: 80% of long-term calculation
Minimum amount	\$309.50	75%	Greater of 75% worker's NWE or 70% of QOTE #	85%	80%	80%	75% (or 150% of AWE in the NT, whichever is lesser)	65% of pre-injury earnings or statutory floor (\$543.78) whichever is more	Lesser of 75% or statutory amount (\$393.79)	NZ\$384
Variation	Increases for dependent spouse and/or children	Less capacity to earn	-	Subject to award rates	Less capacity or deemed capacity to earn	Less capacity to earn	More for dependants, less capacity to earn	More for dependants, less capacity to earn	More for dependants, less capacity to earn	Less capacity to earn
Financial Limit	\$1654.40	\$1250 per	\$244 710	Limit on	\$2335.60	-	-	-	150% of	NZ\$1638.04

Comparison of Workers' Compensation Arrangements Australia and New Zealand 2009

Parameter	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	Cth	New Zealand
	per week-	week		weekly payments of 2.0 x ABS AWE (\$1904.40) Statutory maximum - \$168 499-	per week-				AWOTEFA*	per week
Time limit	-	130 weeks unless no current work capacity likely to continue indefinitely	5 years	-	130 weeks unless no current and continuing work capacity	9 years	2 years	-	-	-
Age limit	Retirement age + 12 months	65 unless lower industry retirement age. If injured within 130 weeks of retirement max. 130 weeks.	-	65 unless worker is over 64 at time of injury, in which case max 1 year	65 unless worker is within 2 years of retirement age or above retirement age in which case weekly payments are payable for a period of incapacity falling within 2 years after the commencement of the incapacity	65 unless worker is over 64 at time of injury, in which case max. 1 year employment would allow the worker to continue beyond age 65 the Tribunal may determine that weekly payments may continue for a specified period.	65 unless worker is over 64.5 at time of injury, in which case max 6 months.	65 unless worker is over 63 years at time of injury, in which case maximum 2 years is payable	65 unless worker is over 63 years at time of injury, in which case max 2 years whether continuous or cumulative	65 unless: • if a worker is between 63 and 64 years at time of injury, max. 2 years • if a worker is 64 at time of injury, max. 1 year All subject to an election to be entitled to compensation rather than superannuation

If the work related impairment is over 15%, * Average Weekly Ordinary Time Earnings of Full-time Adults (no limit under the MRCA for MRCS)

2.5.2 Medical treatment benefits

Maximum amounts that a person can be compensated for the *reasonable* costs of medical treatment following a work related injury (as at 30 June 2009) are listed in Table 2.6

Table 2.6 – Maximum amounts for medical treatment as at 30 June 2009

Jurisdiction	\$ limit	Other
New South Wales	No limit	Medical expenditure above \$50 000 requires regulator approval.
Victoria	No limit	Except in certain circumstances, ceases 52 weeks after weekly payment entitlement ceases, or after 52 weeks if compensation is payable only for medical and like services.
Queensland	No limit	-
Western Australia	\$50 550	Additional \$50 000 where the worker's social and financial circumstances justify it. An additional \$250 000 beyond the \$50 000 may be ordered by an arbitrator under certain circumstances (Schedule 1, clause 18A(2aa)).
South Australia	No limit	-
Tasmania	No limit	Entitlements cease 10 years after the date the claim was lodged
Northern Territory	No limit	-
Australian Capital Territory	No limit	Total amount must not be more than the maximum amount (agreed between employer and worker or \$617.63 for each treatment
Commonwealth	No limit	-
New Zealand	No limit	-

2.5.3 Permanent impairment entitlements

Some work related injuries result in medical conditions that will never resolve, such as loss of a limb or chronic conditions. Jurisdictions provide lump sum payments for permanent impairment where the degree of impairment is above a threshold percentage. DVA, which bases its calculations on a legislatively defined impairment point system, provides a choice between lump sum and periodical payments, of which weekly amount can be wholly or partly converted to an age-based lump sum. There may be additional amounts payable for other loss, such as pain and suffering, or caps on the amounts that could be obtained through the courts.

Table 2.7 – Permanent impairment thresholds and entitlements as at 30 June 2009

Jurisdiction	% of impairment	Lump Sum	Additional
New South Wales	Physical injury 1% Hearing loss 6% binaural Primary psychological injury 15%	\$231 000	Maximum amount of \$50 000 for pain and suffering
Victoria	10% except for psychiatric impairments and additional 10% for further hearing loss except for total losses compensated under different table. 5% for Chapter 3 musculoskeletal injuries with a date of injury on or after 2 December 2003. 30% for psychiatric impairment not secondary to physical injury.	\$396 690	\$484 830 (less any statutory impairment benefit paid)
Queensland	1% Hearing loss 5%	\$244 710	\$244 710
Western Australia	1% Hearing loss initial 10% and subsequent loss 5%	\$168 499	-
South Australia	None except hearing loss 5% There is no entitlement to compensation for permanent psychiatric impairment in South Australia, therefore the question of impairment threshold does not apply.	\$420 558	
Tasmania	5% WPI >0% fingers and toes 10% psychiatric impairment Hearing loss 5%	\$223 824	-
Northern Territory	5%	\$231 254.40	-
Australian Capital Territory	1% Hearing loss 6%	\$123 525 single loss \$185 288 multiple loss	-
Commonwealth	10% WPI; 5% hearing; >0% fingers, toes, taste, smell MRCS: Initial compensation 10 impairment points (IP), 5 IPs hearing, fingers, toes, taste, smell. Additional compensation 5 IPs	\$150 396 MRCS: \$361 487 (max. limit for combination of initial and additional compensation)	\$56 399 MRCS: \$71 018 for each dependant child if receiving maximum compensation- Telephone, children's education, medical and pharmaceutical expenses payable in some circumstances.
New Zealand	1%	NZ\$117 184.28	-

2.5.4 Death benefits

There are occasions where some work related injuries result in death. Each jurisdiction has a benefit structure in place that provides for lump sum payments, funeral costs and weekly payments for dependents. Some jurisdictions provide additional payments for spouses and counselling.

Table 2.8 – Death benefits as at 30 June 2009

Death benefits	Lump sum	Weekly payments/ child	Funeral	Other
New South Wales	\$433 650	\$110.20	\$9000	
Victoria	\$265 590	95% (first 13 weeks) of pre injury earnings for dependent spouse and/or children to max \$1250 per week 50% of earnings for 14 weeks to 3 years.	\$9300	Counselling for family \$5160 max
Queensland	\$458 370	10% of 'ordinary time earnings' payable weekly to each dependent family member until 16 or a student (where spouse is totally dependent)	Reasonable	\$12 245 paid to totally dependent spouse - reduced by the total amount of weekly payment of compensation
Western Australia	\$230 992	25% of deceased's notional weekly earnings if child is "orphan", or 12.5% if "dependent, non-orphaned" or a child's allowance of \$44.20 per week (subject to LPI) for each dependent 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.	\$8149	-
South Australia	\$420 558	Orphaned child - 25% of deceased's notional weekly earnings for a totally dependent child, less depending on degree of dependency. Not orphaned – 12.5% of deceased's notional weekly earnings for a totally dependent child, less depending on degree of dependency	\$7470	Weekly payments of up to 50% of notional weekly earnings for a totally dependent spouse or domestic partner, less depending on degree of dependency

Comparison of Workers Compensation Arrangements Australia and New Zealand 2009

Death benefits	Lump sum	Weekly payments/ child	Funeral	Other
Tasmania	\$223 824.33	Spouse – weekly payments for 2 years A dependent child is entitled to 10% of the <i>basic</i> salary, commencing on the expiration of 13 weeks after the date of death.up to age 16 or 21 if a full-time student. (\$60.66 pw 2009)	Reasonable cost of burial or cremation	Spouse is entitled to weekly payments calculated at the same rate as the deceased would have received if he/she became totally incapacitated <ul style="list-style-type: none"> • first 13 weeks: 100% of weekly payments • 14-78 weeks: 85% of weekly payments • 78 weeks-2 years: 80% of weekly payments
Northern Territory	\$289 068	\$111.18	\$5781.36	-
Australian Capital Territory	\$185 288	\$61.76	\$4941	-
Commonwealth	SRCA \$412 000 Seacare: \$412 000 MRCS: \$507 968 (age based maximum amount for partner) \$118 363 (additional amount for partner where a <i>service death</i> as defined) \$71 018 (for each "other dependant")	SRCA \$113.30 Seacare: \$113.30 MRCS: \$78.12	SRCA \$9575.91 Seacare: \$5207.58 MRCS: \$9576	- MRCS: Medical treatment for partner/child for all conditions. Financial advice \$1420. Telephone, children's education and pharmaceutical allowances. Bereavement payments for a limited time where deceased was in receipt of periodical compensation payments.
New Zealand	Spouse: NZ\$5653.66 Each child or other dependant : NZ\$2826.84 s381	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.	NZ\$5273.30	Child care payments: NZ\$120.22 for a single child, NZ\$72.13 each if there are more than two children, and a total of NZ\$168.31 for 3 or more children.

* A number of death benefit amendments were introduced by the *Workers Compensation Legislation Amendment (Benefits) Act 2008* – refer to Recent Developments 1.3

2.5.5 Dispute resolution

Review and appeal rights for a person who is claiming compensation and disagrees with a decision about their entitlements are listed in Table 2.9.

Table 2.9 – Dispute resolution as at 30 June 2009

Jurisdiction	Initial	Then
New South Wales	Process for dispute resolution - <ul style="list-style-type: none"> • Internal review by insurer • Application lodged at the Workers Compensation Commission • Permanent impairment claims are referred to an approved medical specialist • All other claims are referred to an arbitrator (weekly benefits, medical disputes and liability) • Arbitrator will attempt conciliation • Arbitrator makes decision Refer to Table 3.5	Appeals against the decision of an arbitrator come before a presidential member of the Commission. The decision of the President or Deputy President is final. Any further appeal must be based on an error of law.
Victoria	Conciliation	Courts
Queensland	Internal review	Q-COMP, then Industrial Magistrate or Commission, then Industrial Court
Western Australia	Conciliation	Dispute Resolution Directorate (arbitration), Commissioner, District Court
South Australia	Internal reconsideration	Conciliation, Judicial determination (Single Presidential Member), Full Bench of Workers Compensation Tribunal, Appeal to Full Supreme Court on special leave
Tasmania	Conciliation, Worker's Rehabilitation and Compensation Tribunal	Arbitration by Tribunal, Appeal to Supreme Court
Northern Territory	Mediation	Work Health Court
Australian Capital Territory	Conciliation	"An injured worker or the worker's employer may file an application for the arbitration of – <ul style="list-style-type: none"> (a) a matter in issue arising from the worker's claim for compensation only if – <ul style="list-style-type: none"> (i) the worker or employer has asked a conciliator to help the parties reach agreement on the matter; and (ii) the parties have attended the conciliation; and (iii) either the matter was not resolved at the conciliation or the conciliator decided that the matter was not suitable for conciliation; or (b) the insurer's rejection of the workers'

Jurisdiction	Initial	Then
		claim for compensation” – s 48 (Part 7) of the <i>Workers Compensation Regulation 2002</i> .
Commonwealth	Reconsideration MRCS: a choice between reconsideration and Veterans’ Review Board.	AAT, then Federal Court then High court
New Zealand	Review and mediation, conducted by an independent reviewer or mediator	A review decision can be appealed to the District Court. Appeals on questions of law can be taken to the High Court and the Court of Appeal

3. Administrative arrangements of workers' compensation schemes

This section provides background information on the administrative and legislative 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 section covers the following subjects:

- 3.1 Scheme arrangements
- 3.2 Legislation
- 3.3 Transitional provisions
- 3.4 Unique provisions and other workers' compensation schemes
- 3.5. Dispute Resolution
- 3.6 Uninsured Employers

3.1 Scheme arrangements

Employers who work in more than one state or territory must operate under the schemes in each jurisdiction in which they work.

As at 30 June 2009, workers' compensation arrangements in each jurisdiction were administered by the authorities listed in Table 2.1. Principal contacts for policy relating to the schemes can be found in Table 3.1.

Table 3.1 – Jurisdictional contacts

Jurisdiction	Contact	Position	Phone No.	Fax No.	Email	Postal Address	Internet
New South Wales	Michael Young	Director, Business Analysis and Strategy	(02) 4321 5160	(02) 9287 5160	Michael.young@workcover.nsw.gov.au	Michael Young	Director, Business Analysis and Strategy
Victoria	Rachel Quinn	Director, Corporate Legal Services	1800 136 089 (general) (03) 9641 1064 (specific)	(03) 9641 1769	rachel_quinn@worksafe.vic.gov.au	WorkSafe Victoria GPO Box 4306 MELBOURNE VIC 3001	www.worksafe.vic.gov.au
Queensland	Jennifer Dunn	Acting Director, Workers' Compensation Policy Branch, Department of Justice and Attorney-General	(07) 3225 2390	(07) 3404 3550	jennifer.dunn@justice.qld.gov.au	Department of Justice and Attorney-General, WHSQ, GPO Box 69, BRISBANE QLD 4001	www.justice.qld.gov.au
Western Australia	Wendy Attenborough	General Manager Scheme Development	(08) 9388 5698	(08) 9388 5550	Wendy.Attenborough@workcover.wa.gov.au	Scheme Development WorkCover WA 2 Bedbrook Place SHENTON PARK WA 6008	www.workcover.wa.gov.au
South Australia	Emma Siami	Acting Manager, Policy and Government Relations, Corporate Affairs and Strategy	131 855 (general enquiries) (08) 8233 2267 (specific enquiries)	(08) 8233 2044	esiami@workcover.com	Policy and Government Relations, WorkCover Corporation, GPO Box 2668, ADELAIDE SA 5000	www.workcover.com
Tasmania	Rod Lethborg	Principal Policy Advisor, Workers' Compensation	(03) 6233 3182	(03) 6233 8338	Rod.Lethborg@justice.tas.gov.au	Workplace Standards Tasmania, PO Box 56 ROSNY PARK TAS 7018	www.justice.tas.gov.au
Northern Territory	Anna McGill	Director, Compensation and Information	(08) 8999 5018	(08) 8999 5141	anna.mcgill@nt.gov.au	Rehabilitation and Compensation Unit, NT WorkSafe, GPO Box 1722, DARWIN NT 0801	www.worksafe.nt.gov.au

Jurisdiction	Contact	Position	Phone No.	Fax No.	Email	Postal Address	Internet
Australian Capital Territory	Jon Quiggin (operations)	Senior Director, Office of Regulatory Services, Dept of Justice and Community Services	(02) 6207 9734	(02) 6205 0336	Jon.Quiggin@act.gov.au	GPO Box 158, CANBERRA ACT 2601	http://www.orc.act.gov.au/
	Meg Brighton (policy)	Senior Manager, Workers Compensation, Chief Minister's Department	(02) 6205 3095	(02) 6207 6775	meg.brighton@act.gov.au	GPO Box 158, CANBERRA ACT 2601	www.cmd.act.gov.au
Comcare	Alex O'Shea	Director, SRC Policy	1300 366 979	(02) 6274 8729	o'shea.alex@comcare.gov.au	SRC Policy, Comcare, GPO Box 9905, CANBERRA ACT 2601	www.comcare.gov.au
Seacare	Gerard Newman	Director, Secretariat and Seacare Management Section	(02) 6275 0061	(02) 6274 8755	gerard.newman@comcare.gov.au	Seafarers' Safety, Rehabilitation and Compensation Authority GPO Box 9905, CANBERRA ACT 2601	www.seacare.gov.au
MRCS	Stuart Kennedy	Director, Communications and External Liaison Section	(02) 6289 6085	(02) 6289 4854	Stuart.kennedy@dva.gov.au	Rehabilitation, Compensation and Income Support Policy Group, Department of Veterans' Affairs, PO Box 9998, WODEN ACT 2606	www.dva.gov.au
New Zealand	Keith McLea	General Manager, ACC Insurance	+64 4 918 7700 (general) +64 4 918 7665 (specific)	+64 4 918 7351	keith.mclea@acc.co.nz	Accident Compensation Corporation, P O Box 242, Wellington, New Zealand	www.acc.co.nz

3.2 Legislation

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 2008-09 financial year, workers' compensation schemes operated under separate laws in each jurisdiction, as shown in Table 3.2. Note that the most recent version of each Act is stated to be valid until 30 June 2009. It is not necessarily the case that the Act was superseded then and in fact it may still be current. The end-date of 30 June has been given for the purposes of the Comparison only.

Table 3.2 – Applicable workers' compensation legislation 2008-09

Jurisdiction	Legislation
New South Wales	<p><i>Workers Compensation Act 1987</i> (Version valid from 10 Dec 2008 to 30 June 2009) (Version valid from 1 July 2008 to 9 Dec 2008)</p> <p><i>Workplace Injury Management and Workers Compensation Act 1998</i> (Version valid from 1 July 2008 to 30 June 2009)</p>
Victoria	<p><i>Accident Compensation Act 1985</i> (Version 155 valid from 1 Jan 2009 to 30 June 2009) (Version 154 valid from 17 Dec 2008 to 31 Dec 2008) (Version 153 valid from 1 Dec 2008 to 16 Dec 2008) (Version 152 valid from 26 Nov 2008 to 30 Nov 2008) (Version 151 valid from 19 Nov 2008 to 25 Nov 2008) (Version 150 valid from 17 April 2008 to 18 Nov 2008)</p> <p><i>Accident Compensation (WorkCover Insurance) Act 1993</i> (Version 064 valid from 28 Nov 2007 to 30 Jun 2009)</p>
Queensland	<p>Workers' Compensation and Rehabilitation Act 2003 (permalink to current reprint) (Reprint 3D, valid 22 Jun 2009 to 30 Jun 09) (Reprint 3C, valid 1 Dec 2008 to 21 Jun 09) (Reprint 3B, valid 28 Oct 2008 to 30 Nov 08) (Reprint 3A, valid 1 Jul 2008 to 27 Oct 08)</p>
Western Australia	<p><i>Workers' Compensation and Injury Management Act 1981</i> (Version 08-a0-01 valid 22 May 2009 to 30 June 2009) (Version 08-00-00 valid 8 May 2009 to 21 May 2009) (Version 07-i0-01 valid 1 March 2009 to 7 May 2009) (Version 07-h0-01 valid 1 Dec 2008 to 28 Feb 2009) (Version 07-g0-04 valid 1 July 2008 to 30 Nov 2008)</p>
South Australia	<p>Workers Rehabilitation and Compensation Act 1986 (Version valid 1 April 2009 to 30 June 2009) (Version valid 1 Jan 2009 to 31 March 2009) (Version valid 2 Oct 2008 to 31 Dec 2008) (Version valid 1 July 2008 to 1 Oct 2008)</p> <p>WorkCover Corporation Act 1994 (Version valid 1 July 2008 to 30 June 2009)</p>
Tasmania	<p><i>Workers Rehabilitation and Compensation Act 1988</i> (Version valid 1 Jan 2009 to 30 June 2009) (Version valid 25 Sept 2008 to 31 Dec 2008) (Version valid 28 April 2008 to 24 Sept 2008)</p> <p><i>Workers' (Occupational Diseases) Relief Fund Act 1954 (No. 45 of 1954)</i> (Version valid 1 Feb 1997 to 30 Jun 2009)</p>

Jurisdiction	Legislation
Northern Territory	<i>Workers Rehabilitation and Compensation Act</i> (Version valid 1 July 2008 to 17 June 2009) (Version valid 18 June 2009 to 30 June 2009)
Australian Capital Territory	<i>Workers Compensation Act 1951</i> (Republication No.39, Effective:8 April 2009 to 30 June 2009) (Republication No.38, Effective:2 Feb 2009 to 7 April 2009) (Republication No.37, Effective:10 Jan 2009 to 1 Feb 2009) (Republication No.36, Effective:26 Aug 2008 to 9 Jan 2009) (Republication No.35, Effective:14 Aug 2008 to 25 Aug 2008) (Republication No.34, Effective:2 July 2008 to 13 Aug 2008) (Republication No.33, Effective:11 July 2007 to 1 July 2008)
Commonwealth	<i>Safety, Rehabilitation and Compensation Act 1988</i> (Version valid 5 June 2009 to 30 June 2009) (Version valid 9 January 2009 to 4 June 2009) (Version valid 17 December 2008 to 8 January 2009) (Version valid 1 July 2007 to 16 December 2008) <i>Seafarers Rehabilitation and Compensation Act 1992</i> (Version valid 5 June 2009 to 30 June 2009) (Version valid 17 Dec 2008 to 4 June 2009) (Version valid 22 Mar 2007 to 16 Dec 2008) <i>Military Rehabilitation and Compensation Act 2004</i> (Version valid 9 Jan 2009 to 30 June 2009) (Version valid 11 July 2008 to 8 Jan 2009) (Version valid 3 July 2007 to 10 July 2008)
New Zealand	Injury Prevention, Rehabilitation, and Compensation Act 2001 No 49 (current) (Version valid 01 December 2008 to 30 June 2009) (Version valid 01 October 2008 to 30 November 2008) (Version valid 01 August 2008 to 30 September 2008) (Version valid 01 July 2008 to 31 July 2008)

3.3 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 *Safety, Rehabilitation and Compensation Act 1988* if there was an entitlement under the preceding pieces of legislation.

Table 3.3 – Transitional legislation provisions as at 30 June 2009

Jurisdiction	Legislation
New South Wales	<i>Workers Compensation Act 1926</i> <i>Workers Compensation Act 1987, Schedule 6</i>
Victoria	<i>Workers Compensation Act 1958</i>
Queensland	<i>Workers' Compensation Act 1916</i> <i>Workers' Compensation Act 1990</i> <i>WorkCover Queensland Act 1996</i>
Western Australia	<i>Workers' Compensation and Injury Management Act 1981</i>
South Australia	<i>The Workers Compensation Act 1971 may still apply to injuries with a date of injury prior to 30 September 1987, the date on which the 1986 Act commenced.</i>
Tasmania	<i>Workers Compensation Act 1927</i> <i>Workers' (Occupational Diseases) Relief Fund Act 1954</i>
Northern Territory	<i>Workmen's Compensation Ordinance 1949</i> <i>Workmen's Compensation Act 1979</i>
Australian Capital Territory	<i>The ACT legislation is a consolidation of previous enactments.</i>
Commonwealth	<i>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.</i> MRCS: Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004
New Zealand	<i>Accident Insurance (Transitional Provisions) Act 2000</i> <i>Accident Insurance Act 1998</i> <i>Accident Rehabilitation and Compensation Insurance Act 1992</i> <i>Accident Compensation Act 1982</i> <i>Accident Compensation Act 1972</i>

3.4 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 3.4 lists the minor schemes extant in each jurisdiction. Tables 3.4.1 to 3.4.7 expand on the specific arrangements in each jurisdiction for the minor schemes.

Table 3.4 – Jurisdictional specific workers' compensation legislation as at 30 June 2009

Jurisdiction	Legislation
New South Wales (Table 3.4.1)	<i>Associated General Contractors Insurance Company Limited Act 1980</i> <i>Bishopsgate Insurance Australia Limited Act 1983</i> <i>The Standard Insurance Company Act 1963</i> <i>Workers' Compensation (Brucellosis) Act 1979</i> <i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</i> <i>Workers' Compensation (Dust Diseases) Act 1942</i> <i>Workmen's Compensation (Lead Poisoning – Broken Hill) Act 1922</i> <i>Workers Compensation Regulations 2003</i> <i>Coal Industry Act 2001</i>
Victoria (Table 3.4.2)	<i>Victoria State Emergency Services Act 1987</i> <i>Juries Act 2000</i> Victorian Legislation and Parliamentary Documents go Victorian Law Today and then Education Training and Reform Act 2006. <i>Emergency Management Act 1986</i> <i>Police Assistance Compensation Act 1968</i> <i>Country Fire Authority Act 1958</i>
Queensland	-
Western Australia (Table 3.4.3)	<i>Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001</i> <i>Employers' Indemnity Supplementation Fund Act 1980</i> <i>Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986</i> <i>Workers' Compensation (Common Law Proceedings) Act 2004</i>
South Australia (Table 3.4.4)	<i>Workers Compensation Act 1971</i>
Tasmania (Table 3.4.5)	<i>Workers Compensation Act 1927</i> <i>Workers' (Occupational Diseases) Relief Fund Act 1954*</i>
Northern Territory	Not applicable
Australian Capital Territory	The <i>Workers Compensation Act 1951</i> includes provisions for injured workers whose claim for compensation is unable to be covered by his/her employer or insurer as well as a temporary provision for acts of terrorism.
Commonwealth (Table 3.4.6)	<i>Asbestos Related Claims (Management of Commonwealth Liabilities) Act 2005</i>

Jurisdiction	Legislation
	Veterans' Entitlements Act 1986
New Zealand (Table 3.4.7)	Tuberculosis Act 1948

* No new claims allowed.

Table 3.4.1 Minor schemes - New South Wales

[Associated General Contractors Insurance Company Limited Act 1980](#)

Administered by	NSW WorkCover
Purpose	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> .
Coverage	Any person who would have had (but for the dissolution taking place) an entitlement to payment of any amount arising from or pertaining to any policy of insurance issued by the Company is entitled to payment of that amount: (a) out of the fund , and (b) after the fund is closed, out of the Contribution Fund .
Number covered	Not specified
Basis for legislation	Protect the entitlement for any person whose claim was payable out of the fund administered by the Associated General Contractors Insurance Company.

[Workers' Compensation \(Brucellosis\) Act 1979](#)

Administered by	NSW WorkCover
Purpose	An Act to make special provisions with respect to the payment of workers' compensation to certain workers having or suspected of having brucellosis; to establish a Brucellosis Compensation Fund; to provide for the payment of contributions to that Fund by certain employers and for the reimbursement out of that Fund of certain compensation paid to those workers; to make provisions for or with respect to the medical examination of those workers.
Coverage	Any worker suffering from Brucellosis
Number covered	N/A
Basis for legislation	To establish an industry specific fund to compensate workers who have contracted Brucellosis. Type of compensation is based on the <i>Workers Compensation Act 1987</i> .

[Workers Compensation \(Bush Fire, Emergency and Rescue Services\) Act 1987](#)

Administered by	NSW WorkCover
Purpose	To continue the special compensation scheme for bush fire fighters, emergency service workers and rescue association workers.

Coverage	Bush fire fighters, emergency service workers and rescue association workers.
Number covered	94 600 Rural Fire Service, State Emergency Service and Surf Life Saving volunteers
Basis for legislation	Unique Scheme

Workers' Compensation (Dust Diseases) Act 1942

Administered by	Workers Compensation (Dust Diseases) Board
Purpose	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.
Coverage	Any worker in NSW suffering a 'dust disease' as defined in Schedule 1 of the Act.
Number covered	Not specified
Basis for legislation	A system of no fault compensation for workers and their dependants where a worker suffers death or disability from dust diseases.

Workmen's Compensation (Lead Poisoning – Broken Hill) Act 1922

Administered by	N/A
Purpose	An Act to extend the provisions for the payment of compensation to persons disabled by lead poisoning in or upon the Broken Hill mines.
Coverage	Any workman who was in the employment of a mine-owner for any time during the period of twelve months preceding the thirty-first day of May, 1919, and who, prior to that date, had been employed for not less than one thousand two hundred and fifty shifts in or upon Broken Hill mines, notwithstanding that he may not have been employed in any such mine within twelve months previous to the date of his disablement if the board certifies that: (i) the said workman is suffering from lead poisoning, and is thereby disabled from earning full wages at the work at which he was employed, or (ii) the death of such workman has been caused by lead poisoning.
Number covered	Not specified
Basis for legislation	To provide a statutory benefits regime for mine workers who were previously excluded from the principle statutory workers' compensation systems.

Coal Industry Act 2001

Administered by	Coal Services Pty Limited
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Purpose	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.
Coverage	Workers employed in or about a mine – definition from 1987 Act.
Number covered	N/A
Basis for legislation	Unique Scheme

Treasury Managed Fund

Administered by	NSW Self-Insurance Corporation, a branch of NSW Treasury
Purpose	TMF clients are the NSW Government budget dependent agencies. Other non-budget dependent public sector agencies may join the TMF on a voluntary basis.
Coverage	Workers' compensation as per NSW statute
Number covered	Employees of 137 member agencies (approximately 290 000 employees as at June 2007)
Basis for legislation	Unique Scheme

Table 3.4.2 Minor schemes - Victoria

Volunteers – Recoupable Claims

Administered by	<p>Claims by volunteers under the:</p> <ul style="list-style-type: none"> • <i>Country Fire Authority Act 1958</i> (CFA Act) are administered by the Country Fire Authority (applies to casual fire fighters, volunteer auxiliary workers, volunteer officers and volunteer members). • <i>Police Assistance Compensation Act 1968</i> (PAC Act) are administered by the Police Department (applies to volunteers assisting police officers). <p>Except for claims under the PAC Act 1968 or CFA Act, WorkSafe Victoria (WSV) 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"> • <i>Victorian State Emergency Services Act 1987</i> (applies to registered and casual emergency workers) • <i>Juries Act 2000</i> (applies to jurors) • <i>Emergency Management Act 1986</i> (applies to casual emergency workers). <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>
Purpose	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.

Coverage	<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 below.</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 above Acts.</p> <p>While carrying out the relevant duties, volunteers in prisons and offenders working or participating in a program under a Correctional Order, a provision of the <i>Sentencing Act 1991</i> or Part 9 of the <i>Corrections Act 1986</i>, are deemed workers employed by the Crown.</p>
Number covered	Not known
Basis for legislation	The above Acts provide that volunteers and other persons assisting government agencies are entitled to compensation if injured while carrying out relevant duties. Go to Victorian Legislation and Parliamentary Documents .

Table 3.4.3 Minor schemes - Western Australia

Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986

Administered by	WorkCover WA
Purpose	<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 section 33 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> <ol style="list-style-type: none"> mesothelioma; or lung cancer; or that form of pneumoconiosis known as asbestosis.
Coverage	Waterfront workers, within the meaning of the <i>Compensation Act</i> , 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.
Number covered	N/A
Basis for legislation	N/A

Employers' Indemnity Supplementation Fund Act 1980

Administered by	WorkCover WA
Purpose	Provides for the determination of recommended premium rates for certain employer indemnity policies.
Coverage	Waterfront workers, within the meaning of the <i>Compensation Act</i> , 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.
Number covered	

	N/A
Basis for legislation	N/A

Table 3.4.4 Minor schemes - South Australia**Statutory Reserve Fund**

Administered by	WorkCoverSA
Purpose	Exists to support policies issued under section 118g of the repealed <i>Workers Compensation Act 1971</i> .
Coverage	Statutory workers' compensation benefits and liabilities at common law in respect of injury prior to 4.00pm 30 September 1987.
Number covered	No new policies issued after 4.00pm 30 September 1987. There were no 'run-off' claims as at 30 June 2007, and contingent liability for incurred but not reported claims including exposure to asbestos related injuries incurred prior to 4.00pm 30 September 1987.
Basis for legislation	It makes WorkCoverSA the insurer of last resort under the 1971 Act. It also ensures that an employer could meet their obligation to be fully insured against liability to pay compensation under the 1971 Act – See Clause 5A Schedule 1 <i>Workers Rehabilitation and Compensation Act 1986</i> .

Insurance Assistance Fund

Administered by	WorkCoverSA
Purpose	Exists to support policies issued under section 118g of the repealed <i>Workers Compensation Act 1971</i> (1971 Act).
Coverage	Statutory workers' compensation benefits and liabilities at common law in respect of injury prior to 4.00pm 30 September 1987.
Number covered	No new policies issued post 4.00pm 30 September 1987. Run-off of claims nil as at 30 June 2007 and contingent liability for incurred but not reported claims including exposure to asbestos related injuries incurred prior to 4.00pm 30 September 1987.
Basis for legislation	Insurer of last resort under 1971 Act To make provision so that an employer could meet their obligation to be fully insured against liability to pay compensation under the 1971 Act – See Clause 5A Schedule 1 <i>Workers Rehabilitation and Compensation Act 1986</i> .

Table 3.4.5 Minor schemes - Tasmania***Workers Compensation Act 1927***

Administered by	Department of Justice
Purpose	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.
Coverage	N/A
Number covered	N/A
Basis for legislation	N/A

Workers' (Occupational Diseases) Relief Fund Act 1954

Administered by	Department of Justice
Purpose	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.
Coverage	N/A
Number covered	N/A
Basis for legislation	N/A

Table 3.4.6 Minor schemes - Commonwealth**Administrative Scheme for the Purposes of Compensating Persons Present at British Nuclear Test Sites in Australia**

Administered by	Department of Education, Employment and Workplace Relations
Purpose	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.
Coverage	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.
Number covered	N/A
Basis for legislation	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.

Scheme for the Payment of Special Compensation for Injury in Exceptional Circumstances

Administered by	Department of Education, Employment and Workplace Relations
Purpose	To compensate those persons (listed below) who suffer injuries or contract diseases, under exceptional circumstances, such as injuries which arise as 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.
Coverage	The Special Compensation Scheme provides compensation to Commonwealth government employees and/or their dependents, Commonwealth contractors, people undertaking actions at the direction of the Commonwealth and judges.
Number covered	N/A
Basis for legislation	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.

[Asbestos Related Claims \(Management of Commonwealth Liabilities\) Act 2005](#)

Administered by	Comcare
Purpose	Manages the Commonwealth's asbestos-related claims liabilities for claims made outside the SRC and MRC Acts.
Coverage	Claimants with asbestos-related conditions such as asbestosis, an asbestos-induced carcinoma, an asbestos-related non-malignant pleural disease, mesothelioma etc.
Number covered	There were 103 open claims being managed at 30 June 2009
Basis for legislation	A focal point for the Commonwealth to manage its asbestos liabilities.

[Veterans' Entitlements Act 1986](#)

Administered by	Department of Veterans Affairs
Purpose	<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"> • 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 • all periods of operational service, peacekeeping service and hazardous service; <i>and</i> • war-like operations (for example in East Timor) and non war-like operations.
Coverage	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.

	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.
Number covered	N/A
Basis for legislation	N/A

Table 3.4.7 Minor schemes - New Zealand**Tuberculosis Act 1948**

Administered by	Ministry of Health
Purpose	Make better provision for the treatment, care and assistance of persons suffering or having suffered from tuberculosis and for preventing the spread of tuberculosis.
Coverage	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.
Number covered	350-400 new cases a year.
Basis for legislation	N/A

3.5. Dispute Resolution

Sometimes parties involved in workers' compensation claims are not satisfied with initial outcomes. For example, an employer may feel that a claim should not be approved, or a worker may feel that they are entitled to more benefits.

The function of *dispute resolution* is to help injured workers and their employers resolve issues arising from workers' compensation claims at an early stage to prevent the issues going to court.

Such disputes will often lead to delays and increased costs as the process of resolving disputes can go through many channels before an outcome is reached. Each jurisdiction has provisions to resolve disputes.

For statistics on dispute resolution in each jurisdiction, please refer to the Comparative Performance Monitoring Report (www.workplace.gov.au/cpm).

Table 3.5 outlines the dispute resolution processes in each jurisdiction.

Table 3.5 – Dispute resolution provisions as at 30 June 2009

Jurisdiction	Dispute resolution provisions
New South Wales	<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>Medical Panels: 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>
Victoria	<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>Conciliation: The worker or person making the claim may refer the dispute for conciliation to attempt to resolve the dispute: – s 53 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 and claims for arrears of weekly payments up to 130 weeks. The County Court deals with all other claims: – s43</p>
Queensland	<p>Internal Review by Insurer: Insurer must undertake an internal review of proposed decision to reject the application for 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>Review by Q-COMP: 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-</p>

Jurisdiction	Dispute resolution provisions
	<p>COMP considers appropriate: – s545</p> <p>Appeal to Industrial Magistrate or Industrial Relations Commission: 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>Appeal to Industrial Court: Court rehears evidence and proceedings and additional evidence if ordered by the Court. The Court's decision is final: – s561-s562</p> <p>Medical Panel: Referral to Medical Assessment Tribunal (MAT). No appeal against a decision by MAT unless fresh medical evidence is submitted to MAT within 12 months of the MAT decision: – s512</p>
Western Australia	<p>Conciliation teleconference: The arbitrator may direct the parties to participate in a conciliation teleconference to try and settle the matter: – clause 66 <i>Workers' Compensation (DRD) Rules 2005</i> (the Rules)</p> <p>Conciliation: The arbitrator is not to determine a dispute without first trying to bring both parties to an agreeable settlement: – s185</p> <p>Arbitration: If the matter is not settled at a conciliation conference the arbitrator may determine an application at an arbitration hearing: – clause 71 of the Rules</p> <p>Review: If new information becomes available after an arbitrator's decision has been made, the arbitrator may reconsider the decision and vary, revoke or make any further decisions having regard to the new information:– s186 & s187</p> <p>Commissioner: A party to a dispute may, with the leave of the Commissioner (District Court Judge), appeal to the Commissioner against a decision of an arbitrator: – s247</p> <p>District Court: A party to a proceeding before the Commissioner may appeal to the District Court from a decision of the Commissioner on a question of law</p> <p>Medical Panel: Questions on medical issues, such as conflicting opinions between doctors, can be referred to a Medical Assessment Panel. The Panel also has the ability to determine the nature, extent and degree of permanency of any impairment under Schedule 2: – s210(1)</p>
South Australia	<p>Reconsideration: Disputed claim determinations on a claim must be reviewed and considered 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>Conciliation: 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>Judicial Determination: A hearing is before a presidential member of the Tribunal: – s94A</p> <p>Full Bench: The President can refer a matter to the Full Bench: – s94A. An appeal lies on a question of law from a judicial determination to the Full Bench of the Tribunal: – s86</p> <p>Supreme Court: 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) Additionally, 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),(2a)</p> <p>The Corporation or the Tribunal may require a worker who claims compensation under the Act 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; - section 95F(2) Medical questions are defined in section 98E</p>

Jurisdiction	Dispute resolution provisions
	<p>The opinion of a Medical Panel on a medical question is to be adopted and applied by any body or person acting under the Act and must be accepted as final and conclusive irrespective of who referred the medical question or when the medical question was referred: - section 98H(4)</p>
Tasmania	<p>Conciliation: 2 steps: – 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-s42M</p> <p>Arbitration: Formal hearing held in private, where both parties give evidence. Orders made by the Tribunal are final and binding: – s44-s49</p> <p>Appeal to Supreme Court: Can only appeal on points of law: – s58</p> <p>Medical Panel: 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: – s51 and s63(1)</p>
Northern Territory	<p>Mediation: To try and resolve disputes by having discussions with each party. The mediator may make recommendation to parties in relation to resolution of dispute: – s103B - s103E</p> <p>Work Health Court: Proceedings are conducted with little formality and technicality. The Court may determine the application by confirming, disallowing or substituting the determination: – s111 - s114</p> <p>Appeal to Magistrate: Appeals can be made to Magistrate except for interim determinations: – s114A</p> <p>Supreme Court: Points of law can be referred to the Supreme Court: – s115 & s116 Claimant is not entitled to commence court proceedings unless an attempt of resolution had been made through mediation: – s103J(1)</p>
Australian Capital Territory	<p>Conciliation: 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>Arbitration: 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>Magistrates Court: Appeals or referrals by the Committee: – Part 7 Regulations</p> <p>Medical Referees: Medical referees may be requested throughout the resolution process to prepare a report to help parties reach an agreement: – Part 7 Regulations.</p>
Commonwealth	<p>Comcare: Following an internal reconsideration process (s62), 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>Appeals: A party may apply from the AAT to the Federal Court on questions of law.</p> <p>Seacare: Following a reconsideration process which must involve the assistance of an</p>

Jurisdiction	Dispute resolution provisions
	<p>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-s91</p> <p>MRCS: 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 (see above)</p>
New Zealand	<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. A claimant may apply to the Corporation for a review of –</p> <ul style="list-style-type: none"> a) any of its decisions on the claim b) any delay in processing the claim for entitlement that the claimant believes is an unreasonable delay; or c) any of its decisions under the Code on a complaint. <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>

3.6 Uninsured Employers

In all jurisdictions it is compulsory for employers to have workers' compensation insurance to ensure that workers are covered in case work related injury occurs.

There are instances where workers are not covered for workers' compensation for reasons including:

- employers not being able to be identified or located
- employers not maintaining a workers' compensation insurance policy at the time of injury, or
- insurers defaulting in payments or collapsing.

Most jurisdictions have a safety net scheme in place to ensure uninsured injured workers receive the same benefits as covered workers under the various pieces of legislation. Table 3.6 outlines the uninsured employer's provisions in each jurisdiction.

Table 3.6 – Uninsured employer provisions as at 30 June 2009

Jurisdiction	Uninsured Provisions
New South Wales	<p>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 – s140 (1987 Act). The employer is required to repay the amount spent on the claim and legal expense – s145 (1987 Act), plus penalties incurred for not maintaining a workers' compensation insurance policy</p>
Victoria	<p>Uninsured Employers and Indemnity Scheme (UEIS). WorkSafe Victoria may recover the amount of compensation paid or payable under UEIS from the employer. The UEIS falls under the <i>Accident Compensation (WorkCover Insurance) Act 1993</i></p>
Queensland	<p>WorkCover may recover from the employer the amount of the payment made 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</p>

Jurisdiction	Uninsured Provisions
Western Australia	<p>Where an employer is not insured against their liability to pay compensation 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</p> <p>Where an employer is uninsured, WorkCover WA may sue and recover the amount paid to the injured worker from the General Account to the extent of liability payable under the <i>Workers' Compensation and Injury Management Act 1981</i>. WorkCover WA may sue for and recover from the employer fees, costs and charges incurred by WorkCover WA: – s174AB</p>
South Australia	<p>An employer must not employ workers to whom the Act applies if the employer is not registered with WorkCover: – s59</p> <p>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</p>
Tasmania	<p>The Nominal Insurer is an independent statutory body established to ensure that injured workers are not disadvantaged in circumstances where:</p> <ul style="list-style-type: none"> • 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 grounds, 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. – s.121 <p>The Nominal Insurer will attempt to recover the amount paid in relation to the claim from the employer or insurers involved: – s130</p> <p>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)</p>
Northern Territory	<p>The Nominal Insurer Fund is established by the Minister and administered by the Nominal Insurer: -s. 162</p> <p>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: -s. 167</p> <p>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)</p>
Australian Capital Territory	<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 triple recovery amount (being an amount equal to triple the amount of the premiums that would have been payable to an approved insurer if the employer had maintained a compulsory insurance policy) as a debt owing by the employer to the DI fund. However, the employer is not liable under subsection (1) for a failure to maintain a compulsory insurance policy in relation to a worker if:</p> <ol style="list-style-type: none"> 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

Jurisdiction	Uninsured Provisions
	State in relation to liability for workers' compensation under the law of the State – s149
Commonwealth	<p>Comcare and MRCS: 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.. In the self insured (licensee) component of the scheme, prudential arrangements including the requirement for a bank guarantee held by SRC Commission ensures that any under insurance or non payment of liabilities is provided for</p> <p>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</p> <p>Seacare: The Seafarers Safety Net Fund which all scheme employers contribute to on a per-berth basis provides for a default event</p>
New Zealand	<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>

4. Scheme Funding Arrangements

4.1 Scheme funding

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

In *centrally funded schemes*, a single public insurer (that is 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.

Privately underwritten schemes are the opposite of centrally funded schemes. 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 Northern Territory scheme, a public insurer competes with private insurers for provisions of workers' compensation. The degree of regulation of privately underwritten schemes by government varies among the privately underwritten schemes. Table 4.1 shows which models operate in each jurisdiction (as at 30 June 2009).

Table 4.1 – Type of scheme as at 30 June 2009

Type of Scheme	Jurisdiction
Central	Queensland South Australia Commonwealth (Comcare and MRCS) New Zealand
Hybrid	New South Wales Victoria
Privately Underwritten	Western Australia Tasmania Northern Territory Australian Capital Territory Seacare
Self Insured arrangements	Comcare scheme (its self insured licensees)

4.1.1 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, generally being expressed as a percentage. Where the ratio is over 100 per cent, the scheme may be over funded, and where the ratio is below 100 per cent 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.

4.1.2 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.

4.1.3 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, 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 4.2 shows each jurisdiction's scheme funding position as reported in their annual reports.

Table 4.2 – Schemes' funding positions as at 30 June 2009 and 30 June 2008

Jurisdiction	30 June 2009	30 June 2008
New South Wales	Assets: \$11 596m Liabilities: \$13 078m Funding Ratio: 89%	Assets: \$14 612m Liabilities: \$13 987m Funding Ratio: 105%
Victoria	Assets: \$7881m Liabilities: \$8154m Funding Ratio: 97%	Assets: \$9402m Liabilities: \$7825m Funding Ratio: 120.2%
Queensland	Assets: \$2982m Liabilities: \$2334m Funding Ratio: 127%	Assets: \$3127m Liabilities: \$1910m Funding Ratio: 163.7%
Western Australia	Assets: N/A Liabilities: N/A Funding Ratio: N/A	Assets: N/A Liabilities: N/A Funding Ratio: N/A
South Australia	Assets: \$1283m Liabilities: \$2356m Funding Ratio: 56.7%	Assets: \$1408m Liabilities: \$2417m Funding Ratio: 60.8%
Tasmania	Assets: \$m Liabilities: \$m Funding Ratio: %	Assets: N/A Liabilities: N/A Funding Ratio: N/A
Northern Territory	Assets: \$m Liabilities: \$m Funding Ratio: %	N/A
Australian Capital Territory	Assets: \$m Liabilities: \$m	N/A

	Funding Ratio: %	
Commonwealth	Assets: \$1420m Liabilities: \$1293m Funding Ratio: 109.8% ^a	Assets: \$1399m Liabilities: \$1242m ^a Funding Ratio: 112.7% ^a
New Zealand^b	Assets: NZ\$2251.6m Liabilities: NZ\$2248.0m Funding Ratio: 100.2%	Assets: NZ\$2177m Liabilities: NZ\$1681m Funding Ratio: 129.5%

a. With prudential margin removed according to the Australian Equivalents to International Financial Reporting Standards (AEIFRS).

b. Figures do not 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 (www.workplace.gov.au/cpm), attempts to address most of the areas where differences can occur.

4.2 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 who operate in more than one jurisdiction have to pay the relevant premium in each jurisdiction (see cross-border arrangements).

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

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

In 2007-08 the Australian standardised average premium rate was 1.59% of payroll, a fall of 10% on last year's 1.76%.

Table 4.3 below shows the standardised average premium rate in each jurisdiction over the last five financial years as reported in The CPM report 11th edition (Indicator 15) (www.workplace.gov.au/cpm).

Table 4.3 – Standardised average premium rates 2003-04 to 2007-08

Jurisdiction	2007-08	2006-07	2005-06	2004-05	2003-04
New South Wales	1.88%	2.11%	2.47%	2.54%	2.59%
Victoria	1.44%	1.58%	1.75%	1.97%	2.28%
Queensland	1.09%	1.13%	1.34%	1.47%	1.50%
Western Australia	1.27%	1.59%	1.69%	1.73%	1.96%
South Australia	2.84%	2.81%	2.85%	2.93%	2.90%
Tasmania	1.49%	1.77%	1.90%	2.10%	2.27%
Northern Territory	1.81%	1.81%	2.03%	2.29%	2.44%
Aust Capital Territory (Private)	2.23%	2.58%	2.86%	2.99%	2.93%
Commonwealth: Comcare	1.15%	1.20%	1.20%	1.33%	1.29%
Commonwealth: Seacare	4.71%	5.41%	5.94%	6.80%	7.79%
Commonwealth: MRCS	n/a	n/a	n/a	n/a	n/a
Australian Average	1.59%	1.76%	1.98%	2.13%	2.25%
New Zealand	0.89%	0.93%	0.88%	0.89%	0.89%

The standardised premium rates are determined through 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 document.

4.2.1 Industry rates

Premiums vary from industry to industry. Table 4.4 provides an indication of some selected premium rates.

Table 4.4 – Selected industry premium rates as at 30 June 2009

Industry	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	New Zealand (Excluding Residual Levy)
Average levy/premium rate	1.69%	1.387%	1.15%	1.582%	3.00%	1.83	0.71%
Highest (published) rate	11.672%	11.79%	6.502%	6.54% (Food manufacturing nec)	7.5%	7.74%	8.08%
Highest (experienced rate) rate	N/A	N/A	12.319%	N/A	11.25%	N/A	N/A
Lowest (published) rate	0.220%	0.31%	0.138%	0.40%	0.40%	0.39%	0.04%
Lowest (experienced rate) rate	N/A	N/A	0.029%	N/A	0.28%	N/A	N/A
House construction	5.169%	1.945%	2.333%	1.17%	3.3%	3.52%	2.21%
Non-residential construction	4.028%	2.651%	2.333%	2.32%	3.4%	3.52%	2.20%
Meat products	7.376% (Abattoirs) 7.591% (Meat packing and freezing) 7.252% (Meat processing)	8.429%	5.096% (Meat processing)	4.91% (Meat processing)	7.5%	7.74% (meat processing)	1.18% (Inspection) 4.05% (Processing) 0.97% (Wholesaling)

Industry	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	New Zealand (Excluding Residual Levy)
Rubber products manufacturing	6.163% (Rubber tyre manufacturing) Nec 4.197% (Other rubber product manufacturing)	2.205% - 3.454%	2.573%	3.54% (Rubber tyre manufacturing) 3.44% (Rubber product manufacturing n.e.c.)	7.5%	0.81% (Products) 1.74% (tyre man)	1.03% (Natural rubber product manufacturing) 1.03% (Tyre manufacturing)
Plastic products	4.094% (Plastic product manufacturing)	3.126%	2.116%	2.53% (Plastic blow moulded product manufacturing)	6.4%	3.01% (plast blow moulded product manufacturing)	0.83%
Basic iron and steel products	4.607% (Basic iron and steel manufacturing)	3.466%	2.333%	3.30%	7.5%	2.50%	1.04% (Manufacturing)
Steel casting	4.596% (Iron and steel casting and forging)	5.366%	2.333% (Iron and steel casting and forging)	2.77% (Iron and steel casting and forging)	7.5%	2.50% (Iron and steel casting and forging)	1.29% (Iron and steel casting and forging)
Steel pipes and tubes	4.597% (Steel pipes and tubes manufacturing)	2.439%	2.333%	3.24%	4.7%	2.50%	1.04% (Manufacturing)
Pulp paper and paperboard	3.411% (Pulp paper and paperboard manufacturing)	2.126%	1.920%	3.93%	5.6%	0.81%	0.56% (Manufacturing)
Paints	2.985% (Paint manufacturing)	2.941%	1.433% (Paint manufacturing)	1.40% (Paint manufacturing)	3.8%	1.66% (Paint manufacturing)	0.42% (Manufacturing)
Soap and detergents	2.777% (Soap and other detergent manufacturing)	3.282%	1.433%	1.11%	2.6%	1.66%	0.44% (Manufacturing)

Industry	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	New Zealand (Excluding Residual Levy)
Glass and glass products	4.516% (Glass and glass products manufacturing)	2.752%	2.016%	3.59%	4.3%	3.18%	1.18% (Manufacturing)
Cement	2.924% (Cement and lime manufacturing)	3.103%	1.504% (Cement and lime manufacturing)	3.51% (Cement and lime manufacturing)	4.7%	1.74% (Cement and lime manufacturing)	1.18% (Cement & Lime Manufacturing)
Clothing manufacturing	4.110%	2.241% - 3.236%	1.180%	3.62%	3.9%	2.00%	0.50%
Beer	2.941% (Beer and malt manufacturing)	1.252%	1.300%	1.92%	2.9%	2.00% (Beer and malt manufacturing)	0.47% (Beer & malt manufacturing)
Hotels	2.903%	1.623%	1.300%	1.33% (Pubs, taverns and bars)	3.5%	1.66% (Pubs, taverns and bars)	0.59% (Pubs, taverns & bars)
Bread manufacturing	3.785%	3.374%	2.450%	3.13%	7.5%	2.00%	0.81%
Footwear manufacturing	4.265%	6.580%	1.180%	2.50%	4.6%	2.00%	0.50%
Nursing homes	5.055%	3.520%	2.016%	3.53%	7.5%	2.84%	1.15% (Retirement village operation)
Department stores	2.080%	2.782%	1.019%	1.59%	2.5%	1.66%	0.38%
Medical practice	0.566% (General practice medical services) 0.554% (Specialist medical services)	0.441%	0.203% (General practice medical service)	0.41% (General practice medical services)	0.50%	0.43% (General practice medical services)	0.05% (General practice medical services)

Industry	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	New Zealand (Excluding Residual Levy)
Secondary schools – Private	0.771% (Secondary schools)	0.716%	0.466%	0.73% (No distinction is made between private and government schools)	1.4	1.83% (Secondary education)	0.19% (Secondary education)
Secondary schools - Government	0.771% (Secondary schools)	1.184%	0.540%	0.73% (No distinction is made between private and government schools)	1.4	1.94% (Secondary education)	0.19% (Secondary education)

* Apart from Western Australia and Tasmania (i.e. Northern Territory and Australian Capital Territory), Industry Rates are not provided for jurisdictions with full private insurance underwriting, as each individual insurer set their own Industry Rates.

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.

Victoria - Industry rates are effective rates. Gazetted rates were approximately 35% lower due to transition to a new premium formula and the reduction in scheme rate.

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

Western Australia - All published and premium rates are exclusive of GST.

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

In the Comcare jurisdiction industry rates are not applicable as all employers are experience rated.

New Zealand - All published levy rates are exclusive of GST.

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

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

- Industry classifications vary from jurisdiction to jurisdiction. For example, Victorian industry classifications are based on the Australian Bureau of Statistics ASIC code, and Western Australian and New South Wales on ANZSIC. South Australian industry classifications are based on the Australian Bureau of Statistics code and are progressively being aligned to ANZSIC, with some alterations designed specifically for South Australia localised conditions.
- On 1 July 1997, Queensland introduced an industry classification system based on the ANZSIC system, with some alterations specifically designed for Queensland. The classifications have been named the WorkCover Industry Classifications. 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. All WIC rates were reduced by up to 30% between June 2005 and June 2008. Current industry classes and rates were published in a NSW Gazette notice on 6 June 2008. Refer to the Insurance Premiums order on the WorkCover NSW website, [WorkCover Authority of New South Wales](#).
- Levy/Premium category comparisons are done on a 'best match' basis and should not be regarded as exact equivalents.

The number of self-insurers - those companies which fund their own liability for workers' compensation claims separately to the central system - 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:

- New South Wales: 44 self-insurers, 17 group self-insurers, 7 specialised (or industry specific) insurers and separate arrangements covering most public sector employers
- South Australia: 70 self-insurers plus most of the South Australian Public Sector and Government instrumentalities
- Victoria: 38 self-insurers
- Queensland: 23 self-insurers
- Western Australia: 27 self-insurers. Self insurers are not part of the premium setting process in Western Australia
- Tasmania: 13 self-insurers and a separate insurance fund covering most public sector agencies
- Commonwealth: 29 self-insurers (as at 30 June 2009). Self insurers are not part of the premium setting process in the Commonwealth, and
- New Zealand: 136 self-insurers, which accounts for 400 employers in total. Self insurers are not part of the levy/premium setting process in NZ.

In some jurisdictions, particular industries have traditionally 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 surcharge in New South Wales, which is levied from time to time as funding requirements for these diseases warrant. An OHS fee is additional to the levy (premium) payable in South Australia.
- Jurisdictions vary in their application of GST to premiums. New South Wales' published industry rates include 10 per cent GST. Other jurisdictions generally exclude GST from their published industry premium rates.

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 bonus and penalty system in South Australia, which generally comprises a bonus of up to 30 per cent of levy and a penalty of up to 50 per cent of levy.
- The experience rating in New South Wales and Victoria is based on the size of the employer's tariff premium.
- The extent to which insurance companies may discount or load premiums according to experience may vary. For example, amendments to Western Australia's legislation, effective from 4 January 2005, mean that recommended premium rates can be surcharged up to 75 per cent, and with the WorkCover WA Authority's (Board) approval can be surcharged in excess of 75 per cent. 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 does not have experience rating.

4.2.3 Calculation of industry rates

Each jurisdiction calculates its industry rates differently, by calculating certain claims performance elements, with some jurisdictions also including current industry premium rates.

The Northern Territory and the Australian Capital Territory do not provide industry premium rates due to the legislation giving insurers the power to set their own industry premium rates, which do not have to be gazetted.

The information below outlines how each jurisdiction calculates their industry premium rates.

New South Wales

In 2008-2009, New South Wales had 536 industry classes. Rates are calculated by external actuaries using objective, data-based rating methodology, based on recent wages declared and claims costs. An actuarial model is applied to small industry classes.

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 572 WorkCover Industry Classifications (WIC). Rates are annually calculated 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

Each class of industry levy rate is calculated on rate relativities taking account of an employer's individual experience over a 30-month period to produce rates (within a rate scale between 0.4 per cent and 7.5 per cent, increasing in increments of 0.10 percentage points) that weigh claims cost and claim frequency in a ratio of 3 to 1, aligned to an overall target 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.

New Zealand

In New Zealand, there are 535 classification units and 117 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, and so on) 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.

4.3 Definition of remuneration for the purpose of premiums

Remuneration is 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. It is therefore important to understand how each jurisdiction defines 'remuneration'.

Table 4.5 – Definition of remuneration as at 30 June 2009

Jurisdiction	Definition of remuneration
New South Wales	Total gross earnings (before tax) and some other payments as outlined in the Wages Definition Manual .
Victoria	Gross wages, salaries (including overtime and loadings), bonuses, commission, fringe benefits and superannuation. The Remuneration Checklist outlines payments further.
Queensland	Total gross wages, salaries, superannuation contributions and other payments as outlined in the Wages Definition Manual .
Western Australia	All gross wages, salaries, commissions, bonuses, overtime, allowances and the like, directors fees 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.
South Australia	Payments made to or for the benefit of a worker (quantified in monetary terms). The guideline Remuneration Inclusions/Exclusions (A Guide to Remuneration) identifies what is included as remuneration.
Tasmania	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 of the Definition of Wages, and s96A of the Act.
Northern Territory	Not regulated, however, generally taken to be gross wages, salaries, overtime, bonuses, allowances, commission and all other remuneration paid; including holiday, sick and long service leave pay. No wages guidelines in place.
Australian Capital Territory	Not regulated at 30 June 2009 but will be regulated from 30 June 2010. The ACT Wages and Earnings Guide (based on the WorkCover NSW Wages Definition Manual: October 2003) is available from www.workcover.act.gov.au . This guide assists insurers, employers and employees to ensure consistency in wages declarations. Wages includes 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 (see also AIMS Insurers' Data Dictionary (May 2002 Edition).
Commonwealth	<p>Comcare: 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.</p> <p>Excludes employer superannuation contributions, one off payments and bonuses – generally, non-taxable allowances.</p> <p>Seacare: Not regulated, but generally taken to be gross wages, salaries and all other remuneration including pay in respect of holidays, sick leave and long service leave.</p>
New Zealand	<p>Earnings as an employee mean all gross source deduction payments (i.e. taxable wages) of the person, but does not include social security benefit, student allowance, redundancy payment, retiring allowance or superannuation scheme pension.</p> <p>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.</p> <p>Earnings as a shareholder-employee is defined as any earnings as an employee, and/or any further salary representing payment for services provided as an employee or director of the company.</p>

4.4 Employers' excess

Some schemes require employers to pay an excess before the workers' compensation insurer begins making compensation payments. In some cases, employers may 'buy out' their excess. The type and amount of excess payable by employers varies between jurisdictions as Table 4.6 demonstrates.

Table 4.6 – Employers' excess as at 30 June 2009

Jurisdiction	Excess	Period of incapacity	Cost of benefits	Buyout option
New South Wales	Yes: – s160 (1987 Act) and Insurance Premiums Order	One week's weekly compensation	-	Excess is waived if the claim is reported to a Scheme Agent within 5 days of the employer becoming aware of the injury
Victoria	Yes: – s125A(3)	First 10 days	First \$564 of medical costs	Yes – 10% of premium for policy commencing 1/7/08
Queensland	Yes: – s65	First \$740 weekly compensation, or if the worker's weekly entitlement is less than this, \$1 less than the weekly entitlement (s16 Reg).	First \$740	Yes – 5% of employer's premium or \$10, whichever is greater.
Western Australia	No	-	-	-
South Australia	Yes: – s46 and s33	First 14 calendar days incapacity in payment of income maintenance per worker per calendar year –	-	
Tasmania	Yes: – s97(1A)	First weekly payment May be extended up to first 4 weekly payments	First \$200 of other benefits	Yes – subject to the approval of the WorkCover Tasmania Board s97(1C)
Northern Territory	Yes: – s56	Employer has to pay first day	-	-
Australian Capital Territory	Not prescribed under legislation but may be negotiated between employer and insurer. Employers are liable for weekly compensation payments from date of injury until the insurer is notified of the injury (s95).			
Comcare	No	-	-	-
New Zealand	Yes: – s98	Employer has to pay for the first week	-	-

4.5 Self-insurer arrangements

Each jurisdiction provides for employers to self-insure for workers' compensation, rather than being financial contributors to the State and Territory managed schemes. 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. This also allows companies to process and finance their own workers' compensation claims.

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. Self-insurance also promotes improved OHS practices, as a self-insured company will be directly responsible for the cost arising, so it is in their interest to prevent work related injury.

All workers' compensation jurisdictions in Australia and New Zealand, except Seacare, 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 OHS, injury management and return to work arrangements, as well as the capacity to effectively manage workers' compensation without external involvement.

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 (including OHS regulation). They are also normally required to have sufficient funds to cover any future liabilities and these are often given in the form of bank guarantees to regulating authorities.

Self-insuring employers carry out their claims management and rehabilitation for their injured workers, and have responsibility for meeting all of their claim liabilities. As self-insurers, employers are still required to comply with the relevant legislative and regulatory provisions in their jurisdiction, and penalties apply for non-compliance. Self-insurers have to reapply to self-insure after a period of time.

The tables below outline the self-insurance approval process, application requirements, ongoing licence requirements, and exiting requirements for each jurisdiction. Table 4.7 illustrates the number of self-insurers in each jurisdiction and the number of employees covered by self-insurance.

Table 4.7 – Total workers' compensation coverage by jurisdiction as at 30 June 2009

Jurisdiction	Employees covered by workers' compn 2007-08. ^{1, 2}	Employees covered by self-ins,	% of employees covered by self-ins.	No of self ins. licences	No. of self-ins. employers ⁴	% of employers covered by self-ins.
New South Wales**	3 022 660	258 594*	n/a	61, plus 7 specialised insurers	44 self-insurers, 17 group self-insurers with 99 subsidiaries and 7 specialised insurers ♦	n/a
Victoria	2 407 460 ⁷	200 000 (approx)	-	38	157	0.09% ⁶
Queensland	1 782 360	181 748	10%	23	237	0.16%

Jurisdiction	Employees covered by workers' compn 2007-08. ^{1, 2}	Employees covered by self-ins.	% of employees covered by self-ins.	No of self ins. licences	No. of self-ins. employers ⁴	% of employers covered by self-ins.
						(approx)
Western Australia	1 011 710	89 093	8.8%	27	27	-
South Australia	703 980	-	36.5%	70	70	0.35%
Tasmania	207 280	12 647 ⁸	6.1%	13	13	N/A
Northern Territory	106 810	-	-	5	-	N/A
Australian Capital Territory	117 750	-	-	8	-	0.07%
Commonwealth	381 820	160 000	44%	29	-	13% of employers
New Zealand	1 597 830 ³	-	-	-	136	0.03%

¹ Source: Comparative Performance Monitoring Report, eleventh edition, includes Seacare and ACTPS employees under Commonwealth. These figures have inherent inaccuracies due to the comparatively high standard errors in the estimates involved. Employee figures for 2007-08.

*Does not include TMF and specialised insurers as this data is not collected

♦ WorkCover does not collect details of the employers covered by specialised insurers

² 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.

³ For New Zealand this figure includes self-insurers and self-employed persons who are covered by the Scheme.

⁴ The figures in these tables 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.

⁵ n/a

⁶ 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 Coles and Woolworths.

⁷ For Victoria this figure does not include the self-insured employee numbers. This figure is provided in the next column and is an estimate only based on current FTE figures.

⁸ Employees covered by self-insurance excludes employees covered by State Service Workers Compensation Fund (24 781 employees)

** 2009

The laws and regulations which must be satisfied to become a self-insurer vary significantly between jurisdictions. In addition, 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. As at 30 June 2009, there is no mutual recognition between the jurisdictions. If an employer qualifies for self-insurance in one jurisdiction it does not automatically qualify for recognition in another jurisdiction.

Table 4.8 shows a brief description of the legislative requirements which must be satisfied in each jurisdiction before an employer can self-insure. More detailed self-insurer arrangements are detailed in Tables 4.9 to 4.18.

Table 4.8 – Legislative requirements for self-insurer eligibility as at 30 June 2009

Jurisdiction	Prudential Requirements	Threshold number of workers
New South Wales	Yes: – Part 7, Div 5 (1987 Act)	500 NSW workers or more*
Victoria	Yes: – Part V	No reference
Queensland	Yes: – s71, s 72, s 75	2000 full-time workers for new applicants
Western Australia	Yes: – s164 & s165	No reference
South Australia**	Yes: – s60 & s61	200 SA workers or more –Regulation No 241 of 1999, Part 9_or be identified as a Crown sector employer
Tasmania	Yes: – Part IX, Div 2	No reference
Northern Territory	Yes: – s119 & s120	No reference
Australian Capital Territory	Yes: – Workers Compensation Regulations 2002 Part 10	No reference
Commonwealth	Comcare: Part VIII Seacare: No	No legislative reference (Minister's section 100 guidelines) n/a
New Zealand	Yes: – s185	No reference

*WorkCover will also consider applications from employers which do not have more than 500 employees but are self-insured in other States or Territories.

**Significant legislative amendments were made to the South Australian Scheme with effect from 1 July 2008. Please refer to section 1.7 'Recent Developments'.

Table 4.9 - Self-insurer arrangements - New South WalesApproval process

Applications process	<ol style="list-style-type: none"> 1. Acknowledge receipt of the application fee. 2. Validate application information and request for missing or additional information required for the review. 3. Review application in different areas including financial, injury and claims management (case management), OHS, data management and compliance. 4. Prepare Board Submission to recommend either approving or rejecting the application. 5. Prepare a letter to notify the applicant of either granting the licence with the date of commencement or rejecting the application.
Costs	One-off cost on application of \$25 000 for Single Self-Insurer licence, \$30 000 for Group Self-Insurer licence.

Criteria for becoming a self-insurer

No. of employees	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.
Financial/ prudential requirements	<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"> (i) are adequately capitalised, without any undue reliance on external borrowings - i.e. are conservatively geared; (ii) have a strong and sound financial position based on net tangible assets; (iii) have a sound profit history and positive cash flow. <p>In determining financial viability and strength, WorkCover is not restricted to the exclusive use of the above financial indicators.</p>
OHS requirements on licence application	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.
Bank guarantees/ prudential margins	The initial amount of security will be equivalent to the 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.
Restraints on company structure	<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>This requirement is applicable to group self-insurer licences. All companies in the group licence must execute a cross guarantee in a form approved by WorkCover under which each of the companies guarantee the other companies' liabilities to workers under the <i>Workers Compensation Act 1987</i> and independent of the <i>Workers Compensation Act 1987</i>. WorkCover may use its discretion to take a holding company guarantee as an alternative to a cross guarantee in certain circumstances.</p>
Excess of loss requirements	<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 the Authority 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 - \$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>
Outsourcing allowed	<p>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.</p> <p>Any outsourcing of injury and claims management and data lodgement requires the prior approval of WorkCover. Notwithstanding any approved outsourcing arrangement,</p>

	WorkCover will hold the licensee responsible for maintaining a satisfactory standard of injury and claims management and administration.
Costs	One-off cost on application of \$25 000 for Single Self-Insurer licence, \$30 000 for Group Self-Insurer licence.

Ongoing licence requirements

Reporting requirements	<p>Self insurers must notify WorkCover, in writing and within 10 business days, of becoming aware of any change in the effective control of the Licensee or any change in ownership of the Licensee exceeding 20% of its shareholding.</p> <p>Self Insurers must prepare and lodge with WorkCover, each financial year, a copy of the annual report (including audited financial statements) for the Licensee and, if it is a subsidiary of an Australian holding company, for its ultimate holding company as well. The financial statements must be provided within 4 months of the end of the relevant financial year or such longer period as WorkCover may allow.</p> <p>Self-insurers are also required to provide monthly claims data in a form approved by WorkCover and within the timeframes specified by WorkCover.</p> <p>In order to accurately assess the outstanding claims liability, a self-insurer must provide WorkCover with an actuarial report completed by an actuary in accordance with PS300 on an annual basis certifying the amount of total claims liability incurred as a self-insurer. The actuary must adopt the assumptions advised by WorkCover regarding the appropriate discount rate and claims administration expenses in determining the total claims liability.</p> <p>Self-insurers will be required to report Case Management self-audit results at least 6 months prior to their licence expiry date and lodge any revised injury management program to WorkCover.</p> <p>Reporting requirements pursuant to the Occupational Health & Safety Model for Self-insurers July 2005*:</p> <ul style="list-style-type: none"> • The Audit Plan • Audit Report Summary • Narrative Report • Non-conformance Report • OHS Statistics <p>Reporting requirements for National Self-Insurer OHS Audit Tool reporting for self insurers:</p> <ul style="list-style-type: none"> • an organisational chart and OHS resources identified (including a senior management representative allocated the overall responsibility for the management of the OHSMS) • annual report on the OHS statistics, which indicates trends for type of incident, agency (medium inflicting injury/illness) and nature of injury/illness • OHSMS self-audit report addressing the following seven (7) specific criteria <ul style="list-style-type: none"> ➤ NAT criteria 2.2.3, 2.3.1, 2.3.3, 4.5.2, 4.5.3, 5.1.1 and 5.1.2.
Auditing	WorkCover will conduct Case Management audit and OHS Management System audit on self-insurers periodically as they are required.
Compliance	Self-insurers must comply with all statutory requirements and conditions of licence for licence continuity. Failure to meet such requirements may constitute a basis for licence suspension, cancellation or non-renewal.
Duration of licence	A licence will be granted for a standard period of 3 years and be capable of renewal for further 3-year terms. WorkCover has discretion to grant licences for shorter terms if it believes circumstances are warranted, for example due to a breach of one or more licence conditions.
Ongoing licence requirements	Self-insurers must comply with all statutory requirements and conditions of licence for licence continuity.

Renewal/Surrendering/Exiting requirements

Requirements for surrendering licence	<p>Self-insurers must submit the request in writing to WorkCover. WorkCover will consider the request under s.212 and s.183 of the <i>Workers Compensation Act 1987</i>. WorkCover meets with the self-insurer to discuss the process of surrendering the licence.</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> <ul style="list-style-type: none"> (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; (b) The former licensee will be expected to manage and administer run off claims in a professional manner and continue to co-operate in the provision of claims data and other specified information to WorkCover. Run-off arrangements will be subject to WorkCover approval; <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 section 216 of the <i>Workers Compensation Act 1987</i>.</p> <p>Legislation pursuant to section 213 of the <i>Workers Compensation Act 1987</i> now allows WorkCover to require additional security from former self-insurers.</p>
Contributions by Employers exiting the Managed Fund Scheme (NSW)	<p><i>Workers Compensation Act 1987</i> s208AA provides for contributions to the Insurance Fund to be made by employers who on or after 1 July 1998 became or becomes a self-insurer. 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>
Ongoing contributions	<p>The obligation to make contributions under section 39 of the <i>Workplace Injury Management and Workers Compensation Act 1998</i> and under section 6 of the <i>Workers Compensation (Dust Diseases) Act 1942</i> in respect of any period during which the person was a self-insurer does not cease merely because the person subsequently ceases to be a self-insurer.</p>
Penalties exiting State scheme and moving to Comcare scheme	<p>Extra charges: N/A Time for payment: N/A Specific review provisions: N/A Penalties: N/A</p>

Table 4.10 - Self-insurer arrangements – VictoriaApplication process

Applications process	<p>Assessment of organisation's eligibility to apply is undertaken:</p> <ul style="list-style-type: none"> • The body corporate must be the ultimate holding company in Australia; and • Must satisfy prescribed minimum requirements as to financial strength and viability. <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>
Costs	<p>Assessment fee applies to all applications and is calculated as:</p> <ul style="list-style-type: none"> • 0.033% of the total remuneration paid to Victorian employees, by the organisation, in the 12 months immediately prior to the date of application lodgement; or • \$45 850 (as at 30 June 2009 and subject to indexation), whichever is the lesser amount.

Criteria for becoming a self-insurer

No. of employees	Not applicable
Financial/ prudential requirements	<p>Consideration given to both primary and secondary indicators dependent on industry sector i.e. Manufacturing, Finance, Retail, Transport & Other.</p> <p>Primary indicators: Claims liabilities as % of Net Assets (4%), Gearing Ratio (55-80%), Bad Debt Ratio (2%), Cash & Liquid Assets (= sum of \$5m + 30% of total liabilities) & Excess Capital (10%)</p> <p>Secondary indicators: Stock Turnover (3.5-5%), Debtor Turnover (46-50%), Revenue Growth (2-16%) & Labour Costs (33%)</p>
OHS requirements on licence application	<p>Safety Management Systems are audited against the National OHS Audit Tool for all new applicants and Initial Level SafetyMAP (4th edition) for existing self-insurers until 1 January 2009; the National OHS Audit Tool will then be the standard.</p> <p>Compliance with <i>OHS Act 2004</i> – Inspectorate field interventions including enforcement activity, prosecutions and incident notifications.</p> <p>Claims frequency rates and claims costs.</p>
Bank guarantees/ prudential margins	150% of self insurer liabilities
Restraints on company structure	Holding company and all wholly owned subsidiaries
Excess of loss requirements	Min \$500 000. Max \$2 million. No other exclusions
Outsourcing allowed	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)

Ongoing licence requirements

Reporting requirements	<p>Data to be submitted by 31 August each year. Data required is:</p> <ul style="list-style-type: none"> • workplace location • predominant industry • number of workers • estimated remuneration • remuneration (by 30 September each year) • whether the workplace opened or closed during the reporting period • Quarterly Electronic Data Transfer (Claims Information) <p>Self-insurers are also required to report annually:</p> <ul style="list-style-type: none"> • self-insurer self audit (OHS & claims management) proposal • audit results (non-conformance reports) • audited financial statements/annual report • actuarial assessment of claims liabilities <p>Self-insurers must also notify WorkSafe within 28 days of any of the following occurrences:</p> <ul style="list-style-type: none"> • a body corporate is under official management, is commenced to be wound up or ceases business • a body corporate is a target company • a receiver is appointed in respect of property or part of the property of the body corporate • a body corporate enters into a compromise or scheme arrangement with its creditors • an approved holding company ceases to be a holding company • a subsidiary of an approved holding company moves to Comcare
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	<ul style="list-style-type: none"> a body corporate becomes or ceases to be a subsidiary of an approved holding company
Costs	<p>Application fee as per the Accident Compensation Regulations 2001. Quarterly contributions payable for the duration of the licence period. The amount payable pursuant to section 33A of the <i>Accident Compensation Act 1985</i> is determined by a formula set out in the <i>Accident Compensation Regulations 2001</i>.</p>
Auditing	<p>Annual self-audit requirements for the duration of the licence period – Claims Management & Occupational Rehabilitation & Occupational Health and Safety Management Systems</p> <p>Regulatory audit at time of application – Occupational Health and Safety & Occupational Rehabilitation</p>
Compliance	<p>WorkSafe will monitor the organisation's compliance to the <i>Accident Compensation Act 1985</i>, the Regulations, any terms and conditions of approval and other legislation (e.g., the Occupational Health and Safety Act 2004) throughout the licence period. An annual performance report is provided to each self-insurer with information on a range of indicators (and where possible benchmarked against comparable employers and/or other self-insurers or WorkSafe Agents); including but not limited to claims frequency rates, claims costs, injured worker satisfaction survey and self-audit results.</p>
Duration of licence	<p>Initial approval is for a period of three years and any subsequent approvals are for four years. Terms and conditions may be placed against the organisation as part of the approval.</p>
Ongoing licence requirements	<p>Refer to auditing requirements.</p> <p>Guarantee given by an authorised deposit-taking institution at all times during period of licence guaranteeing payment of amounts not less than the amount of the assessed liability in cases of self-insurer failing to meet its liabilities.</p> <p>Have in force at all times a contract of insurance for contingent liabilities.</p>

Renewal/Surrendering/Exiting requirements

Requirements for surrendering licence	<p>Where a self-insurer requests that their licence be cancelled or in the case where the Authority revokes an approval, the Authority assumes the liability in respect of the assessed liability. An approval may be revoked if a self-insurer is assessed as not being 'fit and proper' or fails to meet a term and condition of the licence.</p> <p>The former self-insurer must ensure all claims and other relevant information is given to WorkSafe and all new claims are lodged with WorkSafe.</p> <p>Where WorkSafe assumes liability, the liability shall, within 28 days after being assumed by the Authority be assessed by an actuary appointed by the Authority; 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.</p> <p>The amount of the liability assessed or determined is a debt due to WorkSafe by the self-insurer and is payable within 28 days after the date of the assessment or determination.</p> <p>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, after the expiration of three years after that assessment or determination, cause that liability to be re-assessed by an actuary appointed by WorkSafe.</p> <p>If the amount of the liability as re-assessed exceeds the amount at the date of the re-assessment of the sum of amounts recovered under the guarantee or the prescribed securities or from the self-insurer, together with any interest accrued on those</p>
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	<p>amounts, the difference is a debt due to WorkSafe from the self-insurer.</p> <p>If the amount of the liability as re-assessed is less than the sum of the amounts, at the date of the re-assessment, the amount of the difference shall be paid to the self-insurer.</p>
Penalties for exiting State scheme and moving to Comcare scheme	<p><i>Accident Compensation Act 1985 — s165</i></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. Legal proceedings seeking a review under the Administrative Law Act 1978 are excluded.</p> <p>Penalties: Interest payable on unpaid amounts as per the <i>Accident Compensation Act 1985</i>.</p>

Table 4.11 - Self-insurer arrangements – QueenslandApproval process

Applications process	-
Costs	<p>\$15 000 application fee for single employers</p> <p>\$20 000 application fee for group employers</p> <p>Levy is paid each financial year</p>

Criteria for becoming a self-insurer

No. of employees	2000 full-time Queensland workers
Financial/ prudential requirements	<ul style="list-style-type: none"> long-term financial viability
OHS requirements on licence application	<ul style="list-style-type: none"> satisfactory occupational Health and Safety performance provision of adequate resources for administering claims and managing rehabilitation of workers (requirement under Act no OHS s75) <p>all workplaces of the employer must have workplace rehabilitation policies and procedures and resources provision of adequate re-insurance cover (requirement under Act no OHS s75)</p>
Bank guarantees/ prudential margins	<ul style="list-style-type: none"> provision of an unconditional bank guarantee or cash deposit of 150% of estimated claims liability, or \$5 million (whichever is the greater)
Restraints on company structure	<p>Groups are restricted to groups of employers that are made up as follows:</p> <ul style="list-style-type: none"> employers who are in the same industry and have a pre-existing stable business relationship; or related bodies corporate (as defined in Corporations Law).
Excess of loss requirements	Retention between \$300 000 and \$1 million

Outsourcing allowed	Yes (s 92(4))
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Ongoing licence requirements

Other matters	-
Reporting requirements	Required to submit claims data (as per the Workers' Compensation Insurers' Interface Data Specifications available at qcomp.com.au) to Q-COMP by the 10 th day of the following month
Costs	Initial set up fee: \$15 000 application fee for single employers \$20 000 application fee for group employers A levy is paid each financial year
Auditing	Insurance performance management plan
Compliance	-
Duration of licence	Original licence issued for a period of 2 years, on renewal, licence period can be up to 4 years
Ongoing licence requirements	<ul style="list-style-type: none"> • ability to provide data in the format and at time intervals required by Q-COMP • A self-insurer must supply to Q-COMP summary information about the claims they have processed on their system. <p>When requested, provide copies of:</p> <ul style="list-style-type: none"> • documents relating to all claims made • documents that may assist in assessing the quality and timeliness of claims and rehabilitation management • documents may assist in assessing the self-insurers financial situation • any other documents required to be kept under the licence.

Renewal/Surrendering/Exiting requirements

Requirements for surrendering licence	<p>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.</p> <p>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.</p> <p>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.</p> <p>If the Authority considers it appropriate, the Authority may, at the request of a former self-insurer, allow the former self-insurer to continue to have functions and powers previously had by the former self-insurer.</p> <p><u>Recovery of ongoing costs from former self-insurer</u></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>Debts are payable within 20 business days after WorkCover's written demand for payment. WorkCover may recover the debt from the unconditional bank guarantee or cash deposit if the former self-insurer fails to pay the debt within the period or</p>
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	<p>authorises WorkCover to do so in writing.</p> <p><u>Assessing liability after cancellation</u></p> <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 and are payable within 20 business days after the date of assessment.</p> <p>If the former self-insurer fails to pay the debt within the period, WorkCover may recover the debt from the unconditional bank guarantee or cash deposit.</p> <p><u>Return of bank guarantee or cash deposit after cancellation</u></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>
Penalties for exiting State scheme and moving to Comcare scheme	<p><i>Workers' Compensation & Rehabilitation Act 2003 — s105B</i></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.</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.</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>

Table 4.12 - Self-insurer arrangements - Western Australia

Approval process

Applications process	<ul style="list-style-type: none"> • Employer submits application to Authority • Authority reviews and considers the application for self-insurer status • Authority provides recommendation on the application to the Minister. • The Governor, on recommendation of the Minister, may exempt an employer.
Costs	<p>Contribute annually to the General Account. The amount is a percentage fixed by the Authority of the total amount of the notional premium. The minimum contribution is \$40 000.</p>

Criteria for becoming a self-insurer

No. of employees	N/A
Financial/ prudential requirements	<p>Provide audited financial statements, which include:</p> <ul style="list-style-type: none"> • current ratio (current assets/current liabilities) • leverage ratio (debt/total assets) • net assets (equity)

OHS requirements on licence application	-
Bank guarantees/prudential margins	Bank guarantee to be determined by the Authority upon application or review. The minimum level for the bond is \$1 million. 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.
Restraints on company structure	-
Excess of loss requirements	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.
Outsourcing allowed	N/A

Ongoing licence requirements

Other matters	<p>Adequate expertise to determine claims within the State in the time limits specified.</p> <p>Effect weekly payments within the frequency specified.</p> <p>Carry out responsibility with respect to injury management.</p> <p>Submit accurate and timely statistical returns/information.</p> <p>Provide and maintain:</p> <ul style="list-style-type: none"> • copy of organisational chart • demonstration that an injury management programme is in place • information 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
Reporting requirements	N/A
Costs	Contribute annually to the General Account. The amount is a percentage fixed by the Authority of the total amount of the notional premium. The minimum contribution is \$40 000.
Auditing	-
Compliance	Authority conducts periodic checks to ascertain if self insurers maintain an acceptable level of compliance against the Guidelines and the Act.
Duration of licence	N/A
Ongoing licence requirements	N/A

Renewal/Surrendering/Exiting requirements

Requirements for surrendering licence	<p><u>Bank Guarantees</u></p> <p>If employer has:</p> <ul style="list-style-type: none"> • ceased to employ workers; or • obtained from an approved insurer a policy of insurance; <p>and:</p>
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	<ul style="list-style-type: none"> • there are no outstanding claims for compensation; or • satisfactory provision has been made for discharging any outstanding claims for compensation. <p>A bank guarantee may be released upon the written commitment from an approved insurer to provide for any past, current and future outstanding claims liabilities.</p>
Penalties for exiting Territory scheme and moving to Comcare scheme	No specific provisions

Table 4.13 - Self-insurer arrangements - South AustraliaApplication process

Applications process	<p>The application process and its progress will consist of a number of steps as outlined below. An indicative time line for the process is Annexure E to the Code:</p> <ul style="list-style-type: none"> (i) Application submitted for evaluation and consideration (ii) 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 (iii) WorkCover appoints one or more evaluators to evaluate the application (iv) The evaluators meet with the employer to outline and discuss the requirements of the evaluation process (see Chapter 8 for details on the evaluation process) (v) The evaluation process proceeds until WorkCover determines whether the employer has met all appropriate Standards and criteria (vi) The employer and WorkCover agree on a target date for commencement of self-insured employer registration if the application is successful (vii) 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 (viii) The employer and WorkCover agree the terms and conditions for the management of transitional liabilities (including all the necessary financial calculations and adjustments) (ix) The Board of WorkCover or Delegated Committee considers the application, and if appropriate, grants self-insured employer registration (x) The employer submits the required financial guarantee, and evidence of the existence of the excess of loss insurance policy (xi) Commencement of self-insured employer registration
Costs	<ul style="list-style-type: none"> • A one off application fee applies of \$5000 plus \$5 per worker employed by the applicant in the state. • yearly special levy payable by self-insurer is a percentage of the levy that would have been payable if they were not a self-insurer

Criteria for becoming a self insurer

No. of employees	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. By policy employment of not less than 200 workers in South Australia is considered adequate without further evidence. Less will require a submission to justify the employers stance
Financial/ prudential requirements	<ul style="list-style-type: none"> • Net worth of \$50 million or higher • Gearing ratio of 2.0 or lower • Liquidity ratio of 1.3:1 or higher • Profitability ratio of 10% per annum on shareholders funds; and • Positive rating by a mercantile agency of risk lower than the industry average

OHS requirements on licence application	Compliance with the Self Insurer Standards which can be found at Annexure A to the Code.
Bank guarantees/prudential margins	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 2008 \$720 000 indexed.
Restraints on company structure	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.
Excess of loss requirements	Self-insurers need to maintain an excess of loss insurance policy that must satisfy: <ul style="list-style-type: none"> • \$100 million on the sum insured • a deductible of not less than \$500 000 per event or series of events, and • 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"> • three times the individual incident excess, or • 10% above the average incurred the claim cost for the prior 3 years.
Outsourcing allowed	Not generally. Decisions must be made by the self insurer itself and this cannot be delegated.

Ongoing licence requirements

Reporting requirements	All claims data must be reported by Electronic Data Interchange on a fortnightly basis.
Costs	Yearly special levy payable by self-insurer is a percentage of the levy that would have been payable if they were not a self-insurer
Auditing	Evaluation 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.
Compliance	-
Duration of licence	Licence (registration) granted for an initial period not exceeding 3 years (in practice it will normally be limited to 2 years initially). A self-insurer may apply to WorkCover to renew its licence for a further period of 3 years.
Ongoing licence requirements	Submit an actuarial report within 3 months of the end of the financial year; Provide annual financial statements no later than 5 months after the expiry of the financial year. Provide evidence of Excess of Loss insurance annually. Ensure there is a valid financial guarantee in place at all times at a value determined by reference to the actuarial report and the application of a multiplier factor of 2.

Renewal/Surrendering/Exiting requirements

Requirements for surrendering licence	<u>Assumption of liabilities</u> WorkCover must undertake the liabilities of any self-insured employer that ceases to be registered as a self-insured employer. However, WorkCover has the discretion to delay this transfer. WorkCover will ordinarily determine to delay the transfer of the self-insured
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	<p>employer's liabilities if it is satisfied of the ability of the employer to continue to manage and bear financial responsibility for the balance of its liabilities for a period of up to 3 years.</p> <p>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.</p> <p>WorkCover may recover the amount of liabilities undertaken by WorkCover either as a debt due to WorkCover or as a claim, in the event the employer is wound up.</p> <p><u>Payment</u></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.</p> <p>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>If the employer elects to pay the capitalised sum from its own resources, WorkCover will retain the financial guarantee for such period as WorkCover determines is necessary to ensure that no part of the payment received by WorkCover is subject to repayment pursuant to the laws relating to insolvency or bankruptcy.</p> <p><u>Run off of claims</u></p> <p>Where WorkCover is satisfied of the ability of the employer to continue to manage and bear financial responsibility for any claims by its Workers in relation to compensable disabilities, it may allow the former self-insured employer to retain responsibility for such liabilities for such a period as WorkCover determines appropriate (a 'run off').</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.</p> <p>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.</p> <p>Without limitation, WorkCover will ordinarily consider the following circumstances as being suitable circumstances in which to allow the former self-insured employer to run off its claims:</p> <ul style="list-style-type: none"> (i) Employers that have substantially reduced their workforce but which have performed their self-insured employer duties and obligations in accordance with the requirements of the Act and its term and conditions of registration (ii) A subsidiary of a self-insured employer is sold and the subsidiary or the self-insured employer has sufficient resources and financial security to run off its claims (iii) An employer closes down its operations in the state, but remains a viable company operating interstate. <p>WorkCover will evaluate the former self-insured employer's compliance with the Act, Standards and the agreement and may terminate the run off if WorkCover considers there are substantive grounds for doing so.</p> <p>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><u>Agreement</u></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> <p>Where appropriate, the agreement will ordinarily:</p> <ul style="list-style-type: none"> (i) identify the circumstances and conditions under which the employer is permitted to retain its liabilities and exercise its delegated powers and discretions (ii) prescribe the consequences of any change in the circumstances or breach of
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	<p>any conditions imposed by WorkCover in such circumstances</p> <p>(iii) plan for the takeover of any residual liabilities by WorkCover, and</p> <p>(iv) provide for operational requirements that must apply, including the provision of an appropriate form of financial guarantee and the maintenance of appropriate qualitative Standards during the period of run off and exercise of delegated powers.</p> <p>The employer must apply for registration as a registered employer with WorkCover within fourteen (14) days of the cessation of its registration as a self-insured employer.</p>
Penalties for exiting State scheme and moving to Comcare scheme	<p>Workers Rehabilitation and Compensation Act 1986 — s50, s67</p> <p>Application: All premium payers and self-insurers who exit the South Australian Compensation Fund. No specific reference is made to employers who join the Comcare scheme.</p> <p>The balancing payment applies whether the premium paying employer exits to self insurance, joins Comcare, leaves the state or simply ceases employing in South Australia for any reason. A balancing payment will not generally be due from a self insurer that exits to Comcare.</p> <p>Balancing Payment: The balancing payment is a contribution to the under funded position of the scheme that has built up while the employer is in the scheme. Its calculation is quite complex and is designed to recover from the employer the contribution the employer would have made to the underfunding through its levies for the period the underfunding is estimated to take to recover.</p> <p>The 2008 amendments provided for a regulated discontinuance fee that is a far simpler calculation methodology based on the employer paying the same proportion of the unfunded liability as they bear to the total scheme by levy payments. This regulation is subject to a parliamentary disallowance motion that has not at this time been decided.</p> <p>Time for payment: Not specified in legislation.</p> <p>Specific review provisions: Employer may seek review by WorkCover if it believes supplementary levies unjust.</p> <p>Penalties: If an employer fails to comply with a condition imposed by WorkCover, a further supplementary levy may be imposed.</p>

Table 4.14 - Self-insurer arrangements – TasmaniaApproval process

Applications process	An employer must make application to the WorkCover Tasmania Board on the approved form.
Costs	No application fee

Criteria for becoming a self-insurer

No. of employees	Not applicable
Financial/ prudential requirements	<p>Summary of financial indicators is to be extracted from the financial statements in the employer's most recent annual report. Financial statements have to be prepared in accordance with Australian Accounting Standards, and financial statements were audited in accordance with Australian Auditing Standards. Summary of financial indicators are:</p> <ul style="list-style-type: none"> • net worth: current assets, non-current assets, current liabilities, non-current liabilities • liquidity ratio: current assets, current liabilities, • equity debt: current liabilities, non-current liabilities, shareholders funds • return on equity

	<ul style="list-style-type: none"> profitability <p>Copies of three most recent annual reports and audited financial statements.</p> <p>Historical financial information to cover the applicant's trading period from commencement to date, complying with Australian Accounting Standards and the Corporations Regulations.</p> <p>Provide Forecast Financial Information, which consists of statement of financial performance; statement of financial position; statement of cash flows, to cover a forecast 12-month trading period.</p>
OHS requirements on licence application	<p>Must have an established occupational health and safety management system.</p> <p>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.</p> <p>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)</p>
Bank guarantees/prudential margins	<p>Bank guarantee equal to:</p> <p>Yr 1: Notional Premium x 100%</p> <p>Yr 2: Notional Premium x 140%</p> <p>Yr 3: Notional Premium x 180%</p> <p>+ <i>the greater of:</i></p> <p>30% of the adjusted notional premium; or</p> <p>the quantum of the catastrophe deductible (per event retention); or</p> <p>\$500 000.</p> <p>After 3 years as a self-insurer; Minimum of 150% of central estimate of outstanding claims liabilities or \$1m whichever is greater</p>
Restraints on company structure	N/A
Excess of loss requirements	Excess of loss policy for a minimum amount of \$50 million. and power of attorney over policy.
Outsourcing allowed	Yes

Ongoing licence requirements

Other matters	-
Reporting requirements	<p>Monthly claims payment data to be submitted by the 21st of each month.</p> <p>Must provide annual financial statements to the Board within 5 months of end of financial year.</p> <p>Claim forms must be submitted to the Board within 5 days of receipt.</p> <p>Must advise in advance of any proposed changes to the company's structure or legal entity.</p> <p>Must undertake to continue to provide data after ceasing to be self-insurer.</p>
Costs	Requirement to make annual contributions to the WorkCover Tasmania Board and the Nominal Insurer Fund.

Auditing	Occupational health and safety management system to be self-audited annually, with the use of the National Audit Tool as the audit tool. Annual self-audits on injury and claims management systems using injuryMAP as the audit tool.
Compliance	-
Duration of licence	Initially 1 year and then depending on outcome of audit, it can range from 1 year to 3 years.
Ongoing licence requirements	N/A

Renewing/Surrendering/Exiting requirements

Requirements for surrendering licence	<p>A self-insurer who wishes to surrender its self-insurer permit must provide the Board with the following in support of its application to cease to hold a self-insurer permit:</p> <ol style="list-style-type: none"> 1. An undertaking to maintain its bank guarantee in place until the Board is satisfied that all existing and potential workers' compensation claim liabilities have been met. 2. A detailed explanation of how existing claims and incurred but not reported claims will be managed if the Board agrees to cancel the permit. This explanation should include financial claim management details, injury management details and advice of the existence of return-to-work plans as required by s139 of the Act. 3. An undertaking to maintain reporting of statistical and other data related to claims that occurred during the period of self-insurance. 4. A deed to the WorkCover Tasmania Board providing legally binding obligation to continue to supply data after ceasing to be a self insurer. 5. A communication plan of how all workers of the self-insurer will be notified of the cessation of self-insurance, and what practical affect this cessation has for them. The communication plan should contemplate a broadcast letter to all workers and individual letters to any worker with an existing claim. <p>The Board, following its consideration of the application and supporting information, shall determine the effective date the self-insurance ceases to be a permit holder.</p> <p>Depending on when the self-insurer ceases to be a permit holder may result in a reimbursement of contribution to the Board or the payment of a contribution to the Board.</p>
Penalties for exiting State scheme and moving to Comcare scheme	No specific provisions

Table 4.15 - Self-insurer arrangements - Northern Territory

Approval process

Applications process	Employer to write to Authority for approval to self-insure – s120
Costs	<p>The only fee for employers is for an actuarial assessment to be provided to NT WorkSafe's actuary.</p> <p>Once a self-insurer, will be required to pay the Territory an amount determined by the</p>

	<p>Authority as a contribution towards:</p> <ul style="list-style-type: none"> • administration costs of the Work Health Court • administration costs of the Supreme Court associated with proceedings under the Act • costs incurred by the Authority in providing a mediation service, and • cost of printing scheme documents.
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Criteria for becoming a self-insurer

No. of employees	No limits
Financial/ prudential requirements	<p>Financial viability of the employer s119 (3)(d), which is to be demonstrated through:</p> <ul style="list-style-type: none"> • 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 • 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 • reinsurance cover of an unlimited amount in excess of the company's liability of \$1 million (indexed) for any one event; and • a three year history of the company's Northern Territory workers' compensation claims.
OHS requirements on licence application	Evidence that the company's Northern Territory operation has in place an occupational health and safety management system and evidence that the company's OH&S policy has been brought to the attention of the company's NT workers.
Bank guarantees/ prudential margins	150% of self-insurer liabilities on application and as assessed at each review.
Restraints on company structure	N/A
Excess of loss requirements	N/A
Outsourcing allowed	N/A

Ongoing licence requirements

Other matters	<p>Ongoing satisfactory demonstration of the employer's ability to:</p> <ul style="list-style-type: none"> • provide the statistical and other information required • provide financial contributions as requested; and • adequately provide for and manage the company's Northern Territory workers' compensation claims. <p>Adequate expertise to determine claims within the Territory in the time limits specified.</p> <p>Effect weekly payments within the frequency specified.</p> <p>Carry out responsibility with respect to injury management.</p> <p>Submit accurate and timely statistical returns/information.</p>
Reporting requirements	Monthly
Costs	There is no cost to employers to lodge a self-insurer application. The only fee for

	<p>employers is for an actuarial assessment to be completed.</p> <p>Once a self-insurer, required to pay the Territory an amount determined by the Authority as a contribution towards:</p> <ul style="list-style-type: none"> • administration costs of the court • part of administration costs of the Supreme Court associated with proceedings under the Act, and • costs incurred by the Authority in providing a mediation service.
Auditing	Generally annual self reporting.
Compliance	-
Duration of licence	Initially 1 year, then up to 3 years once demonstration of satisfactory performance is well established.
Ongoing licence requirements	N/A

Renewal/Surrendering/Exiting requirements

Requirements for surrendering licence	N/A
Penalties for exiting Territory scheme and moving to Comcare scheme	No penalties.

Table 4.16 - Self-insurer arrangements - Australian Capital Territory

Approval process

Applications process	<ul style="list-style-type: none"> • Submit application to the Office of Regulatory Services • The Office of Regulatory Services will undertake the approval process • Once approval process has been undertaken, the Office of Regulatory Services will make a recommendation to the Minister • Once the Minister has made their decision, the applicant will be notified • Should the application be successful, the applicant must complete and return an Acceptance Form within 14 days of the date of notification.
Costs	<p>Application fee to be a self-insurer - \$6007.27 (updated each year) and approval fee - \$6007.27</p> <p>Pay the cost of an audit conducted on behalf of the Minister to establish that the employer has adequate resources to meet the employers expected liabilities.</p> <p>Pay the cost of an investigation by the Minister to assess the employer's injury management programs and personal injury plans.</p>

Criteria for becoming a self-insurer

No. of employees	Not applicable
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Financial/ prudential requirements	<p>Copy of employer's annual report and balance sheet for the previous 3 years. Actuarial report, containing:</p> <ul style="list-style-type: none"> • estimate of current outstanding liability in relation to compensable injuries • 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 • 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 <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>
OHS requirements on licence application	<p>Compliant with employer's duties under Work Safety Act 2008.</p> <p>Copy of OHS policy and evidence that it has been brought to the attention of the employer's workers.</p> <p>Has in place an OHS management system that complies with Australian Standard 4801.</p> <p>Written statement by the employer that the employer will be able to meet its obligations under the Act in relation to injury management programs and personal injury plans.</p>
Bank guarantees/ prudential margins	<p>Guarantee from an authorised deposit-taking institution for the greater amount of:</p> <ul style="list-style-type: none"> • \$750 000; or • an amount calculated by an actuary to be the estimate of outstanding claims liability at the balance date, plus a prudential margin of 30%.
Restraints on company structure	<p>Licence for each legal entity, wholly owned subsidiaries can be included on licence.</p>
Excess of loss requirements	<p>Reinsurance of at least \$50 000 cpi indexed for a single event to cover the employer's future liability under the Act.</p>
Outsourcing allowed	<p>An employer is able to outsource their vocational rehabilitation services to an approved rehabilitation provider.</p>

Ongoing licence requirements

Ongoing reporting requirements	<p>Must provide claims, payments and estimates data on-line on a monthly basis 10 days after the last working day in any month.</p> <p>Must provide a monthly report on policy data details 10 days after the last working days in any month.</p>
Costs	<p>Appropriate audit costs and application fee on renewal of licence.</p>
Auditing	<p>May be audited for performance against Workers' Compensation Regulation 2002.</p>
Compliance	<p>Continue to meet obligations under the Act and Regulations, and any other protocol approved by the Minister that relates to self-insurance.</p> <p>Ensure that workers' compensation claim form, register of injuries and early injury notification form comply with Workers' Compensation Insurer's Form Specifications.</p> <p>Comply with Workers' Compensation Insurers Download Specifications.</p>
Duration of licence	<p>Up to 3 years</p>

Ongoing licence requirements	Employer to give information to the Minister reasonably required in writing about workers' compensation, vocational rehabilitation and occupational health and safety to allow the Minister to assess the employer's continuing suitability to be a self-insurer.
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Renewing/Surrendering/Exiting requirements

Requirements for surrendering licence	No specific requirements in place
Penalties for exiting Territory scheme and moving to Comcare scheme	No specific provisions

Table 4.17 - Self-insurer arrangements – Commonwealth

Application process

Application process	<p><u>Process for applying for eligibility</u></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"> • is, but is about to cease to be, a Commonwealth authority, or • was previously a Commonwealth authority, or • is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority. <p>If the corporation is so declared by the Minister, the corporation is then 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><u>Process for applying to become a self-insurer</u></p> <ul style="list-style-type: none"> • Once a corporation is declared an eligible corporation by the Minister, it may then apply to the Commission for a licence under section 102 of the SRC Act. • The Commission will consider the application and may grant a licence under ss103 and 104 of the SRC Act
Costs	<ul style="list-style-type: none"> • One off application fee based on size, complexity, need for external financial assessment etc

Criteria for becoming a self insurer

No. of employees	As per any Ministerial section 100 guidelines
Financial / prudential requirements	<p><u>Financial:</u> provide independent actuarial estimate of the liabilities that the licensee is likely to incur over the first 12 and 24 months of the licence</p> <ul style="list-style-type: none"> • provide previous 5 years' audited statements • quality assets and liabilities will be assessed • up to date independent valuations of plant, property and equipment may be required • 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.

	<p>Prudential: must have actuary prepare a liability report to Commission's requirements</p> <ul style="list-style-type: none"> • must estimate outstanding liability at the end of the first 2 years' of licence and the level of guarantee required • must recommend a level of provisions to be made in to accounts and appropriate reinsurance arrangements and comment on suitability of arrangements • licensee required to obtain bank or other guarantees in the form required by the Commission and before the commencement of the licence.
OHS, rehabilitation and workers' compensation requirements on licence application	<p>Previous 12 months performance in conforming and complying with OHS, rehabilitation and workers' compensation. The following will be examined:</p> <ul style="list-style-type: none"> • OHS Act 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 • obligations as a rehabilitation authority, especially in relation to any rehabilitation guidelines issued by Comcare (s41 of Act) • 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.
Bank (or other) guarantees/prudential margins	<p>The guarantee must be for an amount calculated by the actuary as the greater of:</p> <ol style="list-style-type: none"> 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 <p>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>
Restraints on company structure	A licence is required for each legal entity.
Excess of loss requirements	Variable retention based on actuarial advice.
Outsourcing allowed	Licensees are allowed to outsource their claims management if the licensee receives authorisation from the Commission. The 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.

Ongoing licence requirements

Reporting requirements	<p>The licensee is to meet the following performance standards and be judged against performance measures under each standard:</p> <ul style="list-style-type: none"> • commitment and corporate governance • planning • implementation • measurement and evaluation • management systems review and improvement <p>The licensee must certify in writing to the Commission by specified dates, the estimation of the liability to pay compensation and other amounts under the SRC Act, provision in its accounts for meeting liabilities and the capacity to meet any single claim up to the reinsurance policy retention amount.</p> <p>The licensee must commission a written liability report in respect of each financial year and calculated at the end of that year.</p> <p>The licensee must lodge with the Commission a copy of:</p>
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	<ul style="list-style-type: none"> • reports required under Division 1 of Part 2M.3 of the Corporations Act 2001 • any periodic financial information regarding the affairs of the Licensed Corporation for a financial year that it is required to give to any financial market as defined in the Corporations Act 2001 • any reports or information outlined in the prudential conditions.
Costs	<ul style="list-style-type: none"> • 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 licencees, plus costs specifically applicable to overseeing the licence compliance evaluation program for each licence, and the size of the licensee. There is an OHS contribution to meet regulatory activities in workplace safety.
Auditing	<ul style="list-style-type: none"> • Pre and post licence evaluations occur in the period approaching and immediately after the grant of licence. External audits in OHS, rehabilitation and claims management 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 granted self audit status, present the results to Comcare for desktop auditing. • Where using a contracted claims management service provider the licensee is required to audit that provider each year and within 6 weeks of the completion of each performance audit, give the Commission a written report on the claims manager's performance. • Must co-operate with, and give assistance to, the Commission or its representatives in respect of any audits and evaluations conducted by the Commission or its representatives.
Compliance	<p>Licensee must comply with the requirements of:</p> <ul style="list-style-type: none"> • the SRC Act, Regulations and any other applicable guidelines issued by the Commission under s73A of the SRC Act in respect to rehabilitation and compensation • Commonwealth OHS Act and any applicable laws of the States or Territories with respect to the safety and health of employees • any such guidelines dealing with covert surveillance of employees • conditions of licence relating to financial reporting and prudential arrangements
Duration of licence	Initially a period for 2 years and then 4 years.
Ongoing licence requirements	<p>Comply with any written directions given by the Commission.</p> <p>If claims are managed by a claims manager, provide a copy of the Commission's directions to the claims manager.</p> <p>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.</p> <p>Must notify Comcare in writing immediately that the licensee becomes aware:</p> <ol style="list-style-type: none"> a) licensee has not complied with, or not likely to comply with, a condition of the licence b) of any event that may materially impact upon its sustainability to hold a licence, including its capacity to meet its liabilities under the SRC Act or of any material change in financial position c) any material change to its legal structure, ownership or control d) of any significant change in its employee numbers or significant change in the risk profile of the work undertaken by its employees <p>Provide Commission upon request, information relating to the licensee's operations.</p> <p>Ensuring claims manager complies with the conditions of the licence.</p> <p>Be accountable for all claims management policies issued by the claims manager.</p> <p>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.</p> <p>Must enter into and maintain a written contract with the claims manager and provide</p>

	<p>a copy of the contract to the Commission.</p> <p>Obligations imposed by the licence must be written into the contract between the licensee and the claims manager.</p> <p>Provide a yearly guarantee.</p> <p>Maintain an appropriate level of reinsurance.</p>
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Renewal/Surrendering/Exiting requirements

Requirements for surrendering licence	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.
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Table 4.18 - Self-insurer arrangements - New Zealand

Application process

Application process	<ul style="list-style-type: none"> • Employer completes an application form providing supporting financial, business and health and safety information • Notifies all staff in writing about their intention to join • Consult with employee representatives about intention to join • Co-ordinate staff and documentation for the health and safety audit (completed by an ACC approved independent auditor) using the approved audit tool <p>Submit application to ACC (the Manager):</p> <ul style="list-style-type: none"> • ACC will undertake the approval process • Once approval process has been undertaken, ACC makes decision • The applicant will be notified
Costs	Pay a portion of the pre-entry audit costs

Criteria for becoming a self insurer

No. of employees	<p>No specific minimum employer number.</p> <p>In practice, the pricing mechanism makes entry to the programme not financially viable to employer whose standard levy is less than NZ\$150 000.</p>
Financial/ prudential requirements	<p>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"> • 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. <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 ("<i>period</i>" normally meaning a year).</p>

OHS, rehabilitation and workers' compensation requirements on licence application	<p>An audit of an employer's health and safety systems and practices is carried out as part of the entry requirements.</p> <p>A comprehensive entry audit is undertaken in order to satisfy ACC that an employer has the capacity and capability to manage and administer claims at least to the same standard as ACC.</p> <p>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.</p>
Bank guarantees/prudential margins	<p>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 programme obligations completely in its own right in order to be accredited.</p>
Restraints on company structure	<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>
Excess of loss requirements	<p>ACC 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.</p>
Outsourcing allowed	<p>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.</p>

Ongoing licence requirements

Reporting requirements	<p>The Accredited Employer must regularly report to the Manager on claims, entitlements and expenses arising during the Cover Period and ensuing Claim Management Period. At the end of each month, and no later than 5 working days.</p>
Costs	<p>Cost of the independent audit of Health and Safety.</p>
Auditing	<p>Monitoring and audit programme includes:</p> <ul style="list-style-type: none"> • 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 • Onsite audits at least annually of individual Accredited Employer claims management performance. • Regular meetings between the account manager of the Manager and the Accredited Employer (the frequency of which will depend on the experience of the individual Accredited Employer). • 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 Programme; • Active liaison with Accredited Employer's workplace employee representatives (if

	<p>any)</p> <ul style="list-style-type: none"> Monitoring of the ongoing solvency of the Accredited Employer and its expected ability to meet its obligations under the Accreditation Agreement. Annual health and safety audit using approved audit tool
Compliance	<p>Licensee must comply with the requirements of:</p> <ul style="list-style-type: none"> The IPRC Act, Regulations and any other applicable guidelines issued by ACC The Privacy Act 1993 Health Information Privacy Code 1994 The Code of ACC Claimants' Rights
Duration of licence	<p>Approval may be for 1 to 3 years at the employer's option. Annual reviews are undertaken in order to ensure entry (including prudential) requirements are being maintained.</p>
Ongoing licence requirements	<p>Comply with any written directions given by ACC</p> <p>Advise ACC of:</p> <ul style="list-style-type: none"> any serious ongoing claim or claims with a duration < 12 months, as soon as practicable any insolvency event any report from Occupational Health and Safety (Department of Labour) anything that could contribute to ACC reviewing the status of the employer provide a copy of the initiating process to ACC as soon as possible of any court proceedings in relation to a matter arising in respect of a claim <p>Provide ACC upon request, information relating to the licensee's operations Ensuring claims manager complies with the conditions of the licence Retain overall responsibility for claim and case management.</p> <p>Notify ACC 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.</p> <p>Must enter into and maintain a written contract with the claims manager and provide a copy of the contract to the ACC.</p>

Renewal/Surrendering/Exiting requirements

Requirements for surrendering licence	<p>ACC has the right to terminate in respect of</p> <ul style="list-style-type: none"> any insolvency event a material breach <p>if the Accredited Employer no longer complies with the framework or the IPRC Act</p>
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5. Coverage and Eligibility for Benefits

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

- workers
- deemed workers
- injury, and
- workplace

within the jurisdiction where a claim is being made. These terms as defined by each jurisdiction are shown on the following pages.

5.1 Definition of worker

To be eligible for compensation a person injured in the workplace must fall within the definition of *worker* in their jurisdiction. Various schemes are based on the concept that employers are responsible for injuries to their workers that arise out of or in the course of employment. Therefore it is important to understand how each jurisdiction defines 'worker'.

Table 5.1 – Definition of worker as at 30 June 2009

Jurisdiction	Definition of 'worker'
New South Wales	<p>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): – s4(1) (1998 Act) but excluding:</p> <ul style="list-style-type: none"> a) certain members of the Police Force covered by the Police Superannuation Fund; 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; c) certain officers of religious or voluntary associations where remuneration is less than \$700 per year; d) certain registered participants in a sporting organisation covered under the <i>Sporting Injuries Insurance Act 1978</i> <p>but also including certain classes of persons who are deemed by s5 and Schedule 1 to be workers.</p>
Victoria	<ul style="list-style-type: none"> a) a person (including a domestic servant or an outworker) who has entered into or works under a contract of service or apprenticeship or otherwise with an employer whether by way of manual labour, clerical work or otherwise and whether the contract is express or implied, is oral or is in writing b) a person who is deemed to be working under a contract of service c) a person deemed to be a worker d) a school student undertaking work experience or workplace training; e) a TAFE student undertaking practical placement: – s5(1)
Queensland	<p>A worker is an individual who works under a contract of service. Schedule 2 of the Act mentions persons who are or are not workers.</p> <p>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).</p> <p>The three elements of the results test to be satisfied are that:</p> <ul style="list-style-type: none"> • 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

Jurisdiction	Definition of 'worker'
	<ul style="list-style-type: none"> The person is, or would be, liable for the cost of rectifying any defect in the work performed.
Western Australia	<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> <ol style="list-style-type: none"> 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)
South Australia	<ol style="list-style-type: none"> a person by whom work is done under a contract of service (whether or not as an employee) a person who is a worker by virtue of section 103A a self-employed worker, and includes a former worker and the legal personal representative of a deceased worker
Tasmania	<ul style="list-style-type: none"> 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 Any person or class taken to be a worker for the purposes of the Act: – s3(1)
Northern Territory	<p>Contract or agreement of any kind to perform work or a service. Exclusions apply for people who supply an ABN: – s3</p>
Australian Capital Territory	<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)</p> <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>Note: From 30 June 2010 amendments clarifying the broad definition of worker will commence.</p>
Commonwealth	<p>Comcare: "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.</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 & s5</p> <p>Seacare: seafarer, trainee, person attending approved industry training or registering availability for employment or engagement on a prescribed ship: – s4</p> <p>MRCS: 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.</p>
New Zealand	<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 14 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>

5.1.1 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 5.2 provides the definition of deemed worker in each jurisdiction.

Table 5.2 – Definition of deemed worker as at 30 June 2009

Jurisdiction	Definition of deemed worker
New South Wales	<p>Schedule 1 of the 1998 Act lists the twenty-one specific circumstances in which persons are deemed to be workers:</p> <ol style="list-style-type: none"> 1 Workers lent or on hire 1A Outworkers 2 Other contractors 2A Contractors with labour hire services arrangements 3 Rural work 4 Timbergetters 5 Salespersons, canvassers, collectors and others 6 Tributaries 7 Mine employees 8 Mines rescue personnel 9 Jockeys and harness racing drivers 10 Drivers of hire-vehicles or hire-vessels – contract of bailment 11 Caddies and others employed through club 12 Shearers' cooks and others 13 Fire fighters in fire district 14 Workers at place of pick-up 15 Boxers, wrestlers, referees and entertainers 16 Voluntary ambulance workers 17 Ministers of religion 18 Ministers of religion covered by policies 19 Participants in training programs
Victoria	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ol style="list-style-type: none"> (i) Timber contractors: – s6(1) (ii) Drivers of passenger vehicles: – s7 (iii) Contractors: – s8 (iv) Subcontractors: – s9 (v) Subcontractors and their workers: – s10 (vi) Sharefarmers: – s11 (vii) Declared workers of religious bodies and organizations: - s12 (viii) Secretaries of co-operative societies: - s13 (ix) Crown employees, Ministers, government members, judicial officers, bail justices, public corporation members, retired police reserve members: - s14 (x) Persons engaged at places of pick-up for the purposes of being selected for work (e.g. fruit pickers): – s15 (xi) Jockeys and track riders: – s16(4) (xii) Sailors: – s81(2) (xiii) Workers participating in deemed training programs: – s5(4A) - s(4E) (xiv) Other types of deemed workers: – s5
Queensland	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ol style="list-style-type: none"> (i) Workers lent or on hire (including labour hire firms and holding companies: – Schedule 2 (1.6) (ii) Sharefarmers: – Schedule 2 (1.3) (iii) Salespersons: – Schedule 2 (1.4) (iv) Labour workers: – Schedule 2 (1.1) (v) Contractors and workers of contractors: – Schedule 2 (1.5)

Jurisdiction	Definition of deemed worker
Western Australia	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> (i) Workers lent or let on hire: – s5(1) (ii) Contract in substance for personal manual labour or service: – s5(1) (iii) Workers under an industrial award or agreement: – s5(1) (iv) Deceased worker: – s5(1) (v) Police officer: – s5(1) (Who suffers an injury and dies as a result of that injury) (vi) Clergy: – s8, s9 and s10 (vii) Tributaries: - s7 (viii) Jockey: – s11A (ix) Crown workers: – s14(2) (x) Certain persons deemed workers: – s175AA (xi) Working directors: – s10A
South Australia	<p>The definition of “contract of service” in s3(1) of the WRCA 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 for the purposes of the WRCA, include:</p> <ul style="list-style-type: none"> • building work (other than wall or floor tilers) • cleaning work • council driving • taxi and hire car driving • transport driving • work as an entertainer • work as an outworker • work as a licensed jockey • work as a minister, priest or member of another religious order (except Anglican, Catholic, Lutheran and Uniting churches or the Salvation Army) • work as a Review Officer appointed under the WRCA. <p>Under section 103 of the WRCA, the Corporation may also extend the application of the WRCA to self-employed persons.</p> <p>Under section 103A of the WRCA, the Crown is the presumptive employer of volunteers of a prescribed class. To date only Country Fire Service volunteers are prescribed by regulation)</p>
Tasmania	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> (i) Contractors: – s4B (ii) Services of workers lent or on hire: – s4A (iii) Police volunteers: – s6A (iv) Volunteers performing fire-fighting operations and fire prevention operations: – s5 (v) Volunteers providing ambulance services: – s6 (vi) Port and harbour persons engaged at places of pickup: – s25(4) (vii) Salespersons: – s4C (viii) Luxury hire car drivers and taxi drivers: – s4DA & s4DB (ix) Jockeys:- s4DC (x) Specified clergymen: – s3(4) (xi) Participants in training programs: – s4D (xii) Persons in prescribed relationship: – s4E (xiii) Prescribed classes of volunteers (none are prescribed for the purpose of 6B): – s6B
Northern Territory	<p>Circumstances under the Act and Regulations where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> (i) Subcontracting: – s127 (ii) Workers of householders: – s3(5) (iii) Working directors: – s3(3) (iv) Jockeys: – Reg 3A(1)(b) (v) Taxi drivers: – Reg 3A(1)(c) (vi) Community work and volunteers: – s3(4) (vii) Workers lent or let or hire – Reg s3A(3) - s3A(4) (viii) Persons specifically prescribed by the Regulations

Jurisdiction	Definition of deemed worker
Australian Capital Territory	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> (i) Casuals (in certain instances): – s10 (ii) Regular contractors: – s11(1) (iii) Subcontracting: – s13 (iv) Trainees: – s14 (v) Outworkers: – s15 (vi) Timber contractors: – s16 (vii) Family day care carers: – s16A (viii) Religious workers: – s17 (ix) Volunteers: – s17A (x) Commercial voluntary workers: – s18 (xi) Public interest voluntary workers: – s19
Commonwealth	<p>Comcare: The following persons are deemed to be employees of the Commonwealth, provided they perform certain duties:</p> <ul style="list-style-type: none"> (i) the Commissioner of the Australian Federal Police (AFP), Deputy Commissioner of the AFP or an AFP worker; (ii) a member of the Defence Force in certain circumstances; or (iii) a person who is the holder of or is acting in: <ul style="list-style-type: none"> a) an office established by a law of the Commonwealth; or 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 SRC Act applies: – s5(2) <p>The SRC Act 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)</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> <p>Seacare: The Act does not include any category of 'deemed' worker.</p> <p>MRCS: The Defence Minister may make a written determination for the purposes of the MRCA that a person, or a class of persons, is a member of the Australian Defence Force ("declared member") if that person engages, or has engaged, in activities, or who performs, or has performed, acts at the request or direction of the Defence Force; or for the benefit of the Defence Force; or in relation to the Defence Force, under a requirement made by or under a Commonwealth law (s8).</p>
New Zealand	<p>An earner is a natural person who engages in employment for the purposes of pecuniary gain, whether or not as an employee: – s6</p>

5.1.2 Coverage for independent contractors and labour hire workers

The definitions of whether independent contractors and labour hire workers are covered for workers' compensation are listed in Table 5.3.

Table 5.3 Coverage for independent contractors and labour hire workers as at 30 June 2009

Jurisdiction	Are individual contractors covered under legislation?	Are labour hire workers covered under legislation?
New South Wales	Not unless contractor is a deemed worker pursuant to Schedule 1, 1998 Act.	Yes
Victoria	No, if employed under contract <i>for</i> service; they are covered if enter into any form of contract <i>of</i> services	Yes, labour hire firm held to be employer

Jurisdiction	Are individual contractors covered under legislation?	Are labour hire workers covered under legislation?
Queensland	No, if employed under contract <i>for</i> services	Yes, labour hire firm held to be employer
Western Australia	No, if employed under contract <i>for</i> services	Yes, labour hire firm held to be employer
South Australia	Yes, if undertake prescribed work or work of a prescribed class	Yes, labour hire firm held to be employer
Tasmania	No, if employed under contract <i>for</i> services Exception where contract is for work not related to a trade or business (s4B)	Yes, labour hire firm held to be employer
Northern Territory	No, if ABN supplied, otherwise yes	From 1 August 2007, all labour-hire firms will have to purchase workers' compensation insurance for their workers, including those let on hire.
Aust Capital Territory	No, if employed under contract <i>for</i> 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"> the individual has been engaged by the labour hirer under a contract for services to work for someone other than the labour hirer there is no contract to perform work between the individual and person for who work is to be performed the individual does all or part of the work
Commonwealth	Comcare: No, if employed under contract <i>for</i> service Seacare: No, compensation only through employment of employees MRCS: only if a "declared member" (s8)	Comcare: Possibly, according to definition of nature of contract Seacare: No MRCS: only if a "declared member" (s8)
New Zealand	Yes	Yes, labour hire firm held to be employer

5.1.3 Treatment of sportspersons and sporting injuries

All jurisdictions that cover sporting activities in their workers' compensation legislation refer to the professional side of the sport only. Comcare and MRCS 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 New South Wales, 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 5.4 below.

Professional Sports

Virtually all jurisdictions (apart from New Zealand) exclude professional sportspersons from obtaining workers' compensation, unless their work (and their remuneration) is unrelated to the main sporting activity, e.g. administrative or promotional activities, or they deem sportspersons to be workers under their Act. Only the Northern Territory covers professional sportspersons who earn above a certain amount each year. Despite the general exclusions, some jurisdictions deem certain sportspersons related to horse-racing and boxing to be workers under their Act.

Amateur Sports

Injuries received from participation in amateur sporting activities that are related to the workplace either through venue, timing or support can be compensated where the injury **'arises out of or in the course of employment'** or similar qualification. Each claim for an injury sustained during a sporting or leisure activity would be decided on its own merits in accordance with the principles outlined below and relevant case law applicable at the time the claim is considered.

In assessing claims for injuries arising out of sporting activities, jurisdictions would consider issues such as:

- level of employer support
- where the activity was conducted
- when the activity was conducted, and
- the nature of, and requirements of, employment– this will be important in relation to jobs requiring a certain level of physical fitness, for example emergency services personnel.

New Zealand's scheme covers all sports injuries, regardless if they have any connection to the workplace, hence the above points are not applicable.

In New South Wales, registered participants of a sporting organisation that is recognised by the Sporting Injuries Committee under the *Sporting Injuries Insurance Act 1978* are not within the definition of a 'worker' while participating in authorised activities. However, the following sports people are deemed "workers" under New South Wales workers compensation legislation:

- Jockeys and harness racing drivers
- Boxers, wrestlers, referees and entertainers, and
- Caddies and others employed through a club for the purposes of any game or recreation.

Table 5.4 Treatment of sportspersons and sporting injuries as at 30 June 2009

Jurisdiction	Treatment of Sportsperson and Sporting Injuries
New South Wales	<p>The <i>Sporting Injuries Insurance Act 1978</i> provides coverage for serious injury while participating in an authorised activity to persons who are not workers and who are registered members of a sporting organisation that is recognised by the Sporting Injuries Committee. This coverage does not apply to the following "deemed workers":</p> <ul style="list-style-type: none"> • Jockeys and harness racing drivers • Boxers, wrestlers, referees and entertainers • Caddies and others employed through a club for the purposes of any game or recreation. <p>If the sportsperson is a worker or deemed worker, coverage under the workers compensation legislation would be applicable.</p>

Jurisdiction	Treatment of Sportsperson and Sporting Injuries
Victoria	<p><i>Accident Compensation Act 1985</i> s16(1) Except as provided in sub-section (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> <ul style="list-style-type: none"> (i) participating as a contestant in a sporting or athletic activity; (ii) engaged in training or preparation with a view to so participating; or (iii) travelling between a place of residence and the place at which the person is so participating or so engaged. <p>(4) A person—</p> <p>a) engaged to participate as a rider in a horse race at a race meeting held under the Rules of Racing of Racing Victoria; or</p> <p>b) who, not being an apprentice or the owner or trainer of the horse to be ridden, holds a licence, permit or approval to ride granted in accordance with the Rules of Racing of Racing Victoria and who agrees to do ride work on a horse at any racecourse or training track or in the environs of a racecourse or training track —</p> <p>shall be deemed for the purposes only of this Act while participating as such a rider or doing such riding work to be a worker solely employed by Racing Victoria and the amounts paid to the person in respect of so participating or doing shall be deemed to be remuneration.</p>
Queensland	<p><i>Workers Compensation and Rehabilitation Act 2003</i> Schedule 2 Part 2 – Persons who are not workers 2 A person who performs work under a contract of service as a professional sportsperson is not a worker while the person is—</p> <ul style="list-style-type: none"> 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.
Western Australia	<p><i>Workers Compensation and Injury Management Act 1981</i> 11. Exclusion of certain persons who are contestants in sporting or athletic activities Notwithstanding anything in section 5 and subject to section 11A, a person is deemed not to be a worker within the meaning of the Act while he is, pursuant to a contract</p> <ul style="list-style-type: none"> 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, <p>if, under that contract, he is not entitled to any remuneration other than remuneration for the doing of those things.</p> <p>11A. Jockeys</p> <p>1. Notwithstanding section 11, for the purposes of this Act “worker” includes a person licensed as a jockey under the <i>Racing and Wagering Western Australia Act 2003</i></p> <ul style="list-style-type: none"> a) riding a horse in any race run under the management of a racing club registered under the <i>Racing and Wagering Western Australia Act 2003</i>; or b) engaged on a racecourse in riding work, or carrying out the usual duties of a jockey, for a trainer licensed as a trainer under the <i>Racing and Wagering Western Australia Act 2003</i>, <p>and Racing and Wagering Western Australia is, for the purposes of this Act, deemed to be the employer of such a person.</p> <p>2. The earnings of a person included as a worker under subsection (1) shall be deemed to be equal to the rate of wages, including special allowances, prescribed for stable foremen under the Horse Training Industry Award 1976 as made under the <i>Conciliation and Arbitration Act 1904</i> of the Commonwealth and amended from time to time.</p>

Jurisdiction	Treatment of Sportsperson and Sporting Injuries
South Australia	<p><i>Workers Rehabilitation and Compensation Act 1986</i> s58 1. Notwithstanding any other provision of this Act, but subject to subsection (2), where —</p> <ul style="list-style-type: none"> a) a worker is employed by an employer solely— <ul style="list-style-type: none"> (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 (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, a disability arising out of or in the course of that employment is not compensable. <p>2. This section does not apply to—</p> <ul style="list-style-type: none"> 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 b) a boxer, wrestler or referee employed or engaged for a fee to take part in a boxing or wrestling match; or 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 subsection (1)(a) <p>3. In this section— the prescribed amount means—</p> <ul style="list-style-type: none"> a) in relation to 1987—\$27 200; 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 September quarter of the immediately preceding year bears to the Consumer Price Index for the September quarter, 1985.
Tasmania	<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 –</p> <ul style="list-style-type: none"> 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 – <p>if, under that contract, he is not entitled to any remuneration other than remuneration for the doing of those things.</p> <p>Jockeys Section 7 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>
Northern Territory	<p><i>Workers Rehabilitation and Compensation Act 2008</i> 3. Interpretation (10) Notwithstanding anything in this Act, a person shall be deemed not to be a worker for the purposes of this Act while he or she is, in pursuance of a contract –</p> <ul style="list-style-type: none"> a) participating as a contestant in a sporting or athletic activity; b) engaged in training or preparing himself or herself with a view to his or her so participating; or c) travelling in connection with his or her so participating or being so engaged, <p>unless, under the contract, he or she is 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.</p> <p>From <i>Workers Rehabilitation and Compensation Act 2008</i> 3A. Definition of “worker” (1) For the purposes of paragraph (b) of the definition of “worker” in section 3 of the Act –</p> <ul style="list-style-type: none"> (b) a natural person who is authorised by a club, within the meaning of Part III of the <i>Racing and Betting Act</i>, to ride or drive a horse or pony for a fee or reward or provide services as a stable-hand on a racecourse licensed under that Part, while the

Jurisdiction	Treatment of Sportsperson and Sporting Injuries
	<p>person is so engaged (whether or not on a racecourse); and</p> <p>5. Prescribed amount For the purposes of section 3(10) of the Act, the prescribed amount is 65% of the annual equivalent of average weekly earnings.</p>
<p>Aust Capital Territory</p>	<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>
<p>Commonwealth</p>	<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'. The <i>Military Rehabilitation and Compensation Act 2004</i> has similar provisions. Each claim for an injury sustained during a sporting or leisure activity will be decided on its own merits in accordance with the principles discussed above and relevant case law applicable at the time the claim is considered.</p>
<p>New Zealand</p>	<p>The <i>Injury Prevention, Rehabilitation, and 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>

5.1.4 Workers' compensation arrangements for government employers

Table 5.5 Workers' compensation arrangements for government employers as at 30 June 2009

Jurisdiction	Legislation	Self-insurance	Claims managers	Premiums
New South Wales	<i>Workers' Compensation Act 1987</i> <i>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"> All claims are handled by claim agents, which are approved insurers on behalf of SiCorp 	Funding for budget dependent agencies is based on benchmark premiums, an industry based best practice standard
		<ul style="list-style-type: none"> NSW Self-Insurance Corporation (previously known as NSW Treasury Managed Fund) is a self insurance scheme owned and underwritten by the NSW Government for all participating budget dependent agencies. 	<ul style="list-style-type: none"> Claims managed by the self-insured organisation 	
		<ul style="list-style-type: none"> A number of agencies and state owned corporations are self-insured with WorkCover NSW. Specialised Insurers are licensed in similar fashion to self-insurers but organised on an industry basis - most local councils are insured through StateCover Mutual, a specialised insurer in NSW 	<ul style="list-style-type: none"> Claims managed by StateCover Mutual 	
Victoria	<i>Accident Compensation Act 1985</i>	Bodies corporate and the Municipal Association of Victoria can apply to become self-insurers in Victoria. Government agencies, are neither, and therefore cannot become self-insurers under Victorian legislation	Each government agency chooses one of the agents appointed to manage claims in 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
Queensland	<i>Workers' Compensation and Rehabilitation Act 2003</i>	Local governments can apply for self-insurance. Government Owned Corporations and other statutory bodies were able to self-insure until a	All claims are handled by Queensland WorkCover*	All employers are required to pay a premium for a workers' compensation policy*

Jurisdiction	Legislation	Self-insurance	Claims managers	Premiums
		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		
Western Australia	<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 ¹
South Australia	<i>Workers' Rehabilitation and Compensation Act 1986</i>	The Crown and any agency or instrumentality of the Crown is deemed to be a self-insured employer under Section 61 of the Act and are therefore meets 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 an administrative levy each year to meet the costs associated with scheme administration
Tasmania	<i>Workers' Rehabilitation and Compensation Act 1988</i>	The Crown and any agency or instrumentality of the Crown is deemed to be an exempt employer under Section 61 of the Act and are therefore self- insured and meets all of the costs associated with worker's compensation claims The Tasmanian Risk Management Fund is a whole-of-government self-insurance arrangement for funding and managing the insurable liabilities of inner-Budget agencies. The Fund is administered by the Department of Treasury and Finance.	Claims administration is undertaken by a Fund Administration Agent, Marsh Pty Ltd, who is engaged under contract.	The Fund operates on a cost recovery basis with contributions set 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.*

¹ There is no direct reference to government departments in the WA Workers' Compensation and Injury Management Act. RiskCover provides workers' compensation coverage of government agencies through provisions of the Insurance Commission of Western Australia Act 1986.

Jurisdiction	Legislation	Self-insurance	Claims managers	Premiums
Northern Territory	<i>Workers Rehabilitation and Compensation Act 2008</i>	Northern Territory employers can apply to become a self-insurer. There is no reference to government departments The majority of the NTPS is 'insurance exempt' and is treated as a self insurer	Majority of claims are managed by Territory Insurance Office (TIO) (an insurers approved by Northern Territory WorkSafe), in partnership with the Dept of Business and Employment (DBE) and the parent agency. The NTPS pays a fee for this service. Two Govt agencies are insured commercially, and the insurer manages these claims	All employers are required to hold a workers' compensation policy to cover all employees*
Australian Capital Territory	<i>Safety, Rehabilitation and Compensation Act 1988 (Cth)</i>	ACT government agencies operate as though they are Commonwealth departments (see below)	All government claims are handled by Comcare	A premium is paid to Comcare annually
Commonwealth	<i>Safety, Rehabilitation and Compensation Act 1988</i>	Commonwealth Authorities (defined in the Act) may be granted a licence to self insure which may include self management of claims. Departments of state are not such authorities and are not eligible to apply. Note: current licensed authorities are Australia Postal Corporation and Reserve Bank of Australia	All government claims except those covered by self - insurance are managed by Comcare. Claims by the 2 licensed authorities are managed in-house by those authorities.	Commonwealth entities, other than those 2 licensed Commonwealth authorities pay experienced based premiums to Comcare annually.
	<i>Military Rehabilitation and Compensation Act 2004</i>	Not applicable.	The MRCC with the assistance of the DVA administers the scheme.	Not applicable.
New Zealand	<i>Injury Prevention, Rehabilitation and Compensation Act 2001</i>	New Zealand employers can apply to become an Accredited Employer to self manage claims through the Partnership Programme. There is no reference to government departments.	All government claims except those covered by Accredited Employers are managed by ACC. Claims by Accredited Employers are managed by those employers, either in-house or by a contracted third-party administrator.	Government employers pay levies to ACC like all other employers unless they are Accredited Employers.

* There has been no direct reference to government departments. This is an overview of what is stated in the different pieces of legislation

5.1.5 Workers' compensation arrangements for Judges and Members of Parliament

Table 5.6 Workers' compensation coverage for Judges and Members of Parliament as at 30 June 2009

Jurisdiction	Coverage for judges	Coverage for Members of Parliament
New South Wales	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.
Victoria	Covered as state government employees	Section 14(2) of the <i>Accident Compensation Act 1985</i> (Vic) provides that politicians are covered
Queensland	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).
Western Australia	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.
South Australia	Covered as state government employees	Not covered for workers' compensation, although an administrative arrangement provides the equivalent of workers' compensation
Tasmania	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.

Jurisdiction	Coverage for judges	Coverage for Members of Parliament
Northern Territory	Covered as state government employees	Covered - treated as employees of the NT government
Australian Capital Territory	Covered as state government employees	Not covered under the legislation.
Commonwealth	Separate workers' compensation arrangements. Section 5(8) of the <i>Safety, Rehabilitation and Compensation Act 1988</i> (Cth) excludes judges from coverage under that Act.	Separate workers' compensation arrangements. Section 5(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.
New Zealand	Covered as any other employee under the <i>Injury Prevention, Rehabilitation, and Compensation Act 2001</i>	Covered as any other employee under the <i>Injury Prevention, Rehabilitation, and Compensation Act 2001</i>

5.2 Definition of 'work'

An entitlement to workers' compensation is reliant on the relationship of a worker's injury to work. The definition of work is therefore very important, as each jurisdiction deals differently with the concept of 'work'. Injuries which occur on work premises during working hours 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. There are variations among the jurisdictions regarding whether 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 out of the work premises.

Table 5.7 outlines how each jurisdiction defines the concept of work.

Table 5.7 – Selected concepts of 'work' as at 30 June 2009

Jurisdiction	Journeys to and from work	Work related travel	Breaks – onsite	Breaks –offsite
New South Wales	Yes some restrictions: – s10 (1987 Act)	Yes: – covered by s4 definition of 'personal injury arising out of or in the course of employment' (1987 Act)	Yes: – s11 (1987 Act)	Yes: – s11 (1987 Act)
Victoria	No: – s83	Yes, some restrictions: – s83	Yes: – s83	Yes: – s83
Queensland	Yes, some restrictions: – s35	Yes: – s34	Yes: – s34(1)(c)	Yes: – s34(1)(c)
Western Australia	No: – s19(2)	Yes: – s19(1)	Yes	Yes
South Australia	Generally no. Only where there is a real and substantial connection between the employment and the accident out of which the disability arises: – s30(5)	Yes: – s30	Yes: – if the break is authorised: – s30(3)	No
Tasmania	No, some exceptions: – s25(6)	Yes: – s25(6)	Yes: – s25(6)	No, some exceptions: – s25(6)
Northern Territory	Yes some restrictions: – s4	Yes: – s4	Yes: – s4	Yes: – s4
Australian Capital Territory	Yes: – s36	Yes: – s36	No reference	No reference

Jurisdiction	Journeys to and from work	Work related travel	Breaks – onsite	Breaks –offsite
Commonwealth	Comcare: No (some exceptions): – s6(1C) Seacare: Yes: – s9(e) MRCS: Yes, if rendering defence service – s 27	Comcare: Yes: – s6(1)(d) Seacare: Yes: – s9(e) MRCS: Yes, if rendering defence service – s 27	Comcare: Yes:- s6(1)(b) Seacare: Yes: – s9(b) MRCS: Yes, if rendering defence service – s 27	Comcare: No Seacare: Yes: – s9(b) MRCS: Yes, if rendering defence service – s 27
New Zealand	Yes, some restrictions - s28(1)(b)	Yes: – s28(1)(b)	Yes: – s28(1)(b)	Yes, some restrictions

5.3 Definition of injury

Workers' compensation schemes generally provide that a worker is entitled to workers' compensation if they have suffered an *injury* which 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 the 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 the following factors need to be considered:

- relationship to employment
- contribution of employment
- aggravation and acceleration
- diseases
- industrial deafness
- definition of work
- retirement provisions
- exclusionary provisions (general), and
- exclusionary provisions (psychological injuries).

Most schemes cover acknowledged industrial illnesses, in specified circumstances, for which a reverse onus of proof applies. These are usually specified in Acts or regulations and examples include:

- poisoning by various chemicals
- pathological manifestations due to radium and other radioactive substances
- zoonotic diseases such as Q-fever (contracted in any work done at abattoirs, slaughterhouses and knackeries involving contact directly or indirectly with animals or tissues of animals)
- tenosynovitis (contracted in any process or occupation connected with the preparation preserving, canning or bottling of jams, sauces, fruits, pickles or other similar foods for human consumption), and
- primary epitheliomatous cancer of the skin.

5.3.1 Relationship to employment

Where an incident has occurred in the workplace, it needs to be determined that there is a relationship between a worker and employment before the worker can claim workers' compensation.

Legislation in each jurisdiction dictates the relationships that must exist and the table below outlines the relationship required. Due to the breadth of coverage in New Zealand for a person to access personal benefits, a work relatedness test is not a critical issue.

Table 5.8 – Definition of injury and relationship to employment as at 30 June 2009

Jurisdiction	Definition of injury and relationship to employment
New South Wales	" . . . personal injury <i>arising out of or in the course of</i> employment . . .": – s4 (1998 Act)
Victoria	" . . . an injury <i>arising out of, or in the course of, any</i> employment . . .": – s82(1)
Queensland	" . . . a personal injury <i>arising out of, or in the course of, employment</i> . . .": – s32(1)
Western Australia	" . . . a personal injury by accident <i>arising out of or in the course of the</i> employment . . .": – s5
South Australia	" . . . disability <i>arises out of, or in the course of</i> employment . . .": – s30
Tasmania	"An injury, not being a disease, <i>arising out of, or in the course of</i> employment": – s25(1)(a) "an injury, which is a disease, to which his employment contributed to a substantial degree:- s25(1)(b)
Northern Territory	" . . . a physical or mental injury . . . <i>out of or in the course of</i> employment . . .": – s3 & s4
Australian Capital Territory	"a physical or mental injury (including stress) . . . includes aggravation, acceleration or recurrence of a pre-existing injury . . . <i>arising out of, or in the course of, the worker's employment</i> . . .": – s4 & s31
Commonwealth	" . . . a physical or mental injury <i>arising out of, or in the course of, the worker's employment</i> . . . ' or '... an aggravation of a physical or mental injury (other than a disease) ...': s5A Comcare, s3 Seacare MRCS: refer ss27, 29(1), 29(2) and 30 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"> resulted from an occurrence that happened whilst rendering service; arose out of, or was attributable to, any service rendered; 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; 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; arising from treatment provided by the Commonwealth. 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

Jurisdiction	Definition of injury and relationship to employment
	<p>symptoms) '...the aggravation of such an ailment, disorder, defect or morbid condition;':</p> <ul style="list-style-type: none"> 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; aggravated by treatment provided by the Commonwealth.
New Zealand	<p>A work-related personal injury is a personal injury that a person suffers —</p> <p>(a) while he or she is at any place for the purposes of his or her employment: – s28</p>

5.3.2 Contribution of employment

A worker's employment has to contribute to a certain extent to injury before a worker is entitled to workers' compensation. The extent of contribution varies among the jurisdictions.

Table 5.9 outlines how employment has to contribute to an injury in each jurisdiction before a worker is entitled to workers' compensation.

Table 5.9 – Contribution of employment to injury as at 30 June 2009

Jurisdiction	Contribution of employment
New South Wales	No compensation is payable under this Act in respect of an injury unless the employment concerned was a substantial contributing factor to the injury: – s9A (1) (1987 Act)
Victoria	<p>Compensation is not payable in respect of the following injuries unless the worker's employment was a significant contributing factor to the injury –</p> <p>a) a heart attack or stroke injury;</p> <p>b) a disease contracted by a worker in the course of employment (whether at, or away from, the place of employment);</p> <p>c) a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease: – s82(2B) & s82(2C)</p>
Queensland	A significant contributing factor: – s32(1)
Western Australia	To a significant degree (for diseases only): – s5
South Australia	A substantial cause (for psychiatric disabilities only): – s30A(a)
Tasmania	To a substantial degree, that is, employment is the 'major or most significant factor' (for diseases only): – s3(2A)
Northern Territory	To a material degree, (for diseases: – s4(6) and gradual process: – (s4(5))
Australian Capital Territory	A substantial contributing factor: – s31(2)
Commonwealth	<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> <p>Seacare: To a material degree (for diseases): – s10(1)</p> <p>MRCS: <i>De minimis</i> material contribution required ("arose out of, or was attributable to") – ss27b & 27c MRCA</p>

Jurisdiction	Contribution of employment
	In a material degree (for aggravations only): – ss27d & 30 MRCA
New Zealand	Not required, except for work-related gradual process, disease, or infection suffered by the person: – s20(2)(e)

5.3.3 Aggravation and acceleration

Sometimes employment is not the cause of an original injury; however work can aggravate or accelerate a pre-existing injury. That is, it can worsen or speed up the effect of an injury that a worker may have already had.

Is aggravation or acceleration of an injury covered by workers' compensation?

As at 30 June 2009, aggravation and acceleration of existing injuries are covered in all jurisdictions.

5.3.4 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, most jurisdictions have in their legislation tables of diseases which are deemed to be caused through work.

As at 30 June 2009, in all jurisdictions, diseases are covered. The deemed diseases are specified in table 5.10 and their associated causal agents are covered in Table 5.11.

Table 5.10 – Deemed occupational diseases as at 30 June 2009

Disease	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	C'th	NZ
A.I.D.S							y			
Alcohols, diseases caused by				y					y	
Alcohols, poisoning by						y				
Angiocarcinoma of the liver										y
Aniline, poisoning by				y						
Ankylostomiasis					y			y		
Anthrax	y	y		y	y		y	y		y
Antimony poisoning					s					
Antimony, compounds of, poisoning by								s		
Antimony, poisoning by								s		
Arsenic poisoning		s		y	s					
Arsenic, compounds of, poisoning by	s							s		
Arsenic, diseases caused by							y		y	y
Arsenic, poisoning by	s					y		s		
Arsenic, toxic compounds of, diseases caused by							y		y	y
Arsenic, toxic compounds of, poisoning by						y				
Asbestosis		y			y	y	y	y		y
Asbestosis (mesothelioma)		y		y		y	y	y	y	y
Asthma, occupational				y	y	y			y	y

Disease	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	C'th	NZ
Avascular Necrosis		s				y				
Benzene homologues, amino- derivatives of, diseases caused by							y			
Benzene homologues, nitro- derivatives of, diseases caused by							y			
Benzene homologues, poisoning by	s	s		y	s			s		
Benzene homologues, toxic amino- derivatives of, diseases caused by									y	Y
Benzene homologues, toxic nitro- derivatives of, diseases caused by									y	y
Benzene poisoning					s					
Benzene, amido- derivatives of, poisoning by	s	s		y	s			s		
Benzene, amino- derivatives of, diseases caused by							y			
Benzene, amino- derivatives of, poisoning by						y				
Benzene, chloro- derivatives of, poisoning by						y				
Benzene, diseases caused by							y		y	y
Benzene, nitro- derivatives of, diseases caused by							y			
Benzene, nitro- derivatives of, poisoning by	s	s		y	s	y		s		
Benzene, poisoning by	s	s		y	s	y		s		
Benzene, toxic amino- derivatives of, diseases caused by									y	y
Benzene, toxic homologues of, diseases caused by							y		y	y
Benzene, toxic homologues of, poisoning by						y				
Benzene, toxic nitro- derivatives of, diseases caused by									y	y
Beryllium, compounds of, poisoning by								s		
Beryllium, diseases caused by							y		y	y
Beryllium, poisoning by						y		s		
Beryllium, toxic compounds of, diseases caused by							y		y	y
Beryllium, toxic compounds of, poisoning by						y				
Bladder carcinoma										y
Brill's disease				y						
Bronchopulmonary diseases				y			y		y	
Brucellosis (Undulant Fever)	y	y			y		y			y
Byssinosis							y		y	y

Disease	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	C'th	NZ
Cadmium, compounds of, poisoning by								s		
Cadmium, diseases caused by							y		y	
Cadmium, poisoning by						y		s		
Cadmium, toxic compounds of, diseases caused by							y		y	
Cadmium, toxic compounds of, poisoning by						y				
Carbon bisulphide poisoning		y								
Carbon bisulphide, diseases caused by							y			y
Carbon bisulphide, poisoning by				y				y		
Carbon dioxide, poisoning by						y				
Carbon disulphide, diseases caused by									y	
Carbon disulphide, poisoning by						y				
Carbon disulphide, toxic compounds of, diseases caused by							y			
Carbon monoxide poisoning		y			s					
Carbon monoxide, diseases caused by				y			y		y	
Carbon monoxide, poisoning by				y		y		y		
Chemical agents, diseases caused by									y	
Chrome ulceration		s		y	s			s		
Chromium, cancer caused by							y		y	
Chromium, diseases caused by							y		y	y
Chromium, poisoning by						y				
Chromium, toxic compounds of, diseases caused by							y		y	y
Chromium, toxic compounds of, poisoning by						y				
Chronic obstructive pulmonary disease										y
Chronic renal failure										y
Chronic solvent induced encephalopathy										y
Communicable diseases				y						
Compressed air illness						y				
Compressed air, disease caused by							y		y	
Copper poisoning		s			s					
Copper, compounds of, poisoning by								s		
Copper, poisoning by								s		
Cyanogen compounds, poisoning by				y						
Dermatitis venenata		y		y	y					y
Dinitrobenzol, poisoning by				y						
Disorders of bones,							y		y	

Disease	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	C'th	NZ
caused by vibration										
Disorders of joints, caused by vibration							y		y	
Disorders of muscles, caused by vibration							y		y	
Disorders of peripheral blood vessels, caused by vibration							y		y	
Disorders of peripheral nerves, caused by vibration							y		y	
Disorders of tendons, caused by vibration							y		y	
Electrical currents, effects of				y						
Endemic typhus				y						
Epitheliomatous cancer of the corneal surface of the eye				y						
Ethylene oxide, diseases caused by										y
Extrinsic allergic alveolitis				y					s	y
Fibrosis						y				
Fluorine, diseases caused by							y		y	
Fluorine, poisoning by				y		y				
Fluorine, toxic compounds of, diseases caused by							y		y	
Fluorine, toxic compounds of, poisoning by						y				
Glycols, diseases caused by				y					y	
Glycols, poisoning by						y				
Halogen poisoning					s					
Hand-arm vibration syndrome										y
Hepatitis A							y			
Hepatitis B				y			y			
Hodgkins lymphoma										y
Hydrocarbons, aliphatic, halogen derivatives of, poisoning by	y	y		y	s			y		
Hydrocarbons, aliphatic, toxic halogen derivatives of, diseases caused by							y		y	y
Hydrocarbons, aliphatic, toxic halogen derivatives of, poisoning by						y				
Hydrocarbons, aromatic, toxic halogen derivatives of, diseases caused by							y		y	
Hydrocarbons, aromatic, toxic halogen derivatives of, poisoning by						y				
Hydrogen cyanide, compounds of, poisoning by								y		
Hydrogen cyanide, diseases caused by				y			y		y	
Hydrogen cyanide, poisoning by						y		y		
Hydrogen cyanide, toxic derivatives of, diseases				y			y		y	

Disease	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	C'th	NZ
caused by										
Hydrogen sulphide, diseases caused by				y			y		y	
Hydrogen sulphide, poisoning by						y		y		
Infectious diseases						y			y	
Insolation, effects of				y						
Ionising radiation, diseases caused by						y	y		y	y
Ketones, diseases caused by				y					y	
Ketones, poisoning by						y				
Laryngeal carcinoma										y
Lasers, pathological manifestations from				y						
Lead poisoning		s		y	s					
Lead, alloys of, poisoning by	s									
Lead, compounds of, poisoning by	s							s		
Lead, diseases caused by							y		y	y
Lead, poisoning by	s					y		s		
Lead, toxic compounds of, diseases caused by							y		y	y
Lead, toxic compounds of, poisoning by						y				
Leptospirosis	y	y		y	y		y			y
Lung cancer				y			y		y	y
Manganese, compounds of, poisoning by								s		
Manganese, diseases caused by							y		y	y
Manganese, poisoning by						y		s		
Manganese, toxic compounds of, diseases caused by							y		y	y
Manganese, toxic compounds of, poisoning by						y				
Mercury poisoning		s		y	s					
Mercury, amalgams of, poisoning by	s									
Mercury, compounds of, poisoning by	s							s		
Mercury, diseases caused by							y		y	y
Mercury, poisoning by	s					y		s		
Mercury, toxic compounds of, diseases caused by							y		y	y
Mercury, toxic compounds of, poisoning by						y				
Mite dermatitis				y						
Naso-pharyngeal carcinoma										y
Nitric acid esters, other than nitroglycerine, diseases caused by							y		y	
Nitric acid esters, other than nitroglycerine, poisoning by						y				

Disease	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	C'th	NZ
Nitrogen, poisoning by						y				
Nitroglycerine, diseases caused by							y		y	
Nitroglycerine, poisoning by						y				
Nitrous fumes poisoning					s					
Nitrous fumes, poisoning by				y		y				
Nystagmus (miners')						y				
Orf										y
Other mineral poisoning				y						
Oxides of nitrogen, poison by								s		
Parasitic diseases						y			y	
Phosphorus poisoning		s		y	s					
Phosphorus, compounds of, poisoning by	s							s		
Phosphorus, diseases caused by							y		y	y
Phosphorus, poisoning by	s					y		s		
Phosphorus, toxic compounds of, diseases caused by							y		y	y
Phosphorus, toxic compounds of, poisoning by						y				
Plague				y						
Pneumoconiosis				y	y	y	y	y	y	y
Primary epitheliomatous cancer										y
Primary epitheliomatous cancer of the skin	y	y		y	y		y	y	y	y
Radioactive substances other than radium, pathological manifestations from	y	y		y	y			y		
Radium, pathological manifestations from	y	y		y	y			y		
Scrub itch				y						
Scrub typhus				y						
Septic poisoning		s			s					
Silicosis		y	y		y	y	y		y	y
Silicosis (anthraco-silicosis)			y			y	y		y	y
Silicosis (with pulmonary tuberculosis)		y				y	y		y	y
Sino-nasal carcinoma										y
Skin diseases not included under other items									y	
Streptococcus suis										
Subcutaneous cellulitis or acute bursitis arising at or about the knee (beat knee)		y								
Subcutaneous cellulitis or acute bursitis over the elbow (beat elbow)		y								
Swineherd's disease				y						
Tenosynovitis		y						y		
Trinitrotoluene (TNT), poisoning by				y						

Disease	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	C'th	NZ
Tungsten, diseases caused by										y
Vanadium, compounds of, poisoning by								s		
Vanadium, poisoning by								s		
Vibration, diseases caused by							y		y	
Vitiligo										y
Work in compressed air, diseases caused by							y		y	
X-rays, pathological manifestations from	y	y		y	y			y		
Zinc poisoning		s			s					
Zinc, compounds of, poisoning by								s		
Zinc, poisoning by								s		

y = yes, s = yes and sequelae

Table 5.11 – Causal agents for deemed occupational diseases as at 30 June 2009

Agent	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	C'th	NZ
2-naphthylamine										y
4-aminobiphenyl										y
Acrylamide										y
Alcohols				y		y			y	
Aluminium, smelting of						y				
Ammonium bichromate		s		y	s			s		
Ammonium bichromate, preparations of		s		y	s			s		
Aniline				y						
Animal bristles		y		y	y			y		
Animal byproducts					s					
Animal carcasses	y	y		y	y	y	y	y	y	y
Animal carcasses infected with brucella organism		y								
Animal hair		y		y	y			y		
Animal hides	y	y		y	y		y	y		
Animal hoofs	y						y			
Animal horns	y						y			
Animal parts	y				y	y	y	y	y	
Animal proteins										y
Animal skins		y		y	y		y	y		
Animal tissues		y								
Animal wool		y		y	y			y		
Animals		y		y		y		y	y	
Animals infected with anthrax	y	y			y		y	y		y
Animals infected with brucella organism		y								
Anthracene						y	y		y	y
Anthracene, compounds of						y	y		y	y
Anthracene, products of						y	y		y	y
Anthracene, residues of						y	y		y	y
Anthrax	y	y		y	y		y	y		y
Antimony					s			s		
Antimony, compounds of					s			s		
Antimony, preparations of					s			s		

Agent	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	C'th	NZ
Aromatic amines										y
Arsenic	s	s		y	s	y	y	s	y	y
Arsenic, compounds of	s	s		y	s			s		
Arsenic, preparations of		s		y	s			s		
Arsenic, toxic compounds of						y	y		y	y
Asbestos		y		y	y	y	y	y	y	y
Asthmagenic agents									y	
Barium										y
Benzene	s	s		y	s	y	y	s	y	y
Benzene homologues	s	s		y	s			s		
Benzene homologues, amino- derivatives							y			
Benzene homologues, nitro- derivatives							y			
Benzene homologues, toxic amino- derivatives									y	
Benzene homologues, toxic nitro- derivatives									y	
Benzene, amido-derivatives	s	s		y	s			s		
Benzene, amido-derivatives, compounds of				y						
Benzene, amido-derivatives, preparations of				y						
Benzene, amino-derivatives						y				
Benzene, chloro-derivatives						y				
Benzene, compounds of				y						
Benzene, nitro-derivatives	s	s		y	s	y	y	s		
Benzene, nitro-derivatives, compounds of				y						
Benzene, nitro-derivatives, preparations of				y						
Benzene, preparations of				y						
Benzene, toxic amino-derivatives									y	
Benzene, toxic homologues						y	y		y	y
Benzene, toxic nitro-derivatives									y	
Benzidine										y
Beryllium						y	y	s	y	y
Beryllium, compounds of								s		
Beryllium, preparations of								s		
Beryllium, toxic compounds of						y	y		y	y
Biological agents									y	
Bitumen	y	y		y	y		y	y	y	y
Bitumen, compounds of	y	y		y	y		y	y	y	y
Bitumen, products of	y	y		y	y		y	y	y	y
Bitumen, residues of	y	y		y	y		y	y	y	y
Blackwood dust					y					
Blood, human				y			y		y	
Body tissue, human				y			y			
Brucella organisms	y	y			y		y			

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Agent	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	C'th	NZ
Cadmium						y	y	y	y	y
Cadmium, compounds of								s		
Cadmium, preparation of								s		
Cadmium, toxic compounds of						y	y		y	
Carbon bisulphide				y		y		y	y	
Carbon bisulphide gas		y								y
Carbon bisulphide, compounds of				y						
Carbon bisulphide, preparations of				y						
Carbon monoxide gas		y		y	s		y	y	y	
Cattle	y									
Cattle by-products, raw	y									
Cattle carcasses	y									
Chemical agents									y	
Chloromethyl methyl ether										y
Chromic acid		s		y	s			s		
Chromic acid, preparations of		s		y	s			s		
Chromium						y	y		y	y
Chromium, toxic compounds of						y	y		y	y
Coal			y							y
Cobalt										y
Coke oven emissions										y
Compressed air		y				y	y		y	
Copper		s			s			s		y
Copper, compounds of		s			s			s		
Copper, preparations of		s			s			s		
Cotton dust				y			y		y	y
Coxiella burnetii	y	y			y		y	y		
Cyanogen, compounds of				y						
Detergents										y
Dinitrobenzol				y						
Electrical currents				y						
Enzymes										y
Ethylene oxide										y
Flax dust				y			y		y	y
Flour					y					
Flour dust					y					y
Fluorine				y		y	y		y	
Fluorine, toxic compounds of						y	y		y	
Formaldehyde										y
Fruits, bottling of		y								
Fruits, canning of		y								
Fruits, preparation of		y								
Fruits, preserving of		y								
Glycols				y		y			y	
Grain dust										y
Hard metal dust							y		y	
Hemp dust				y			y		y	y
Hydrocarbons, aliphatic, halogen derivates	y	y		y	s			y		

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Agent	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	C'th	NZ
Hydrocarbons, aliphatic, toxic halogen derivates						y	y		y	y
Hydrocarbons, aromatic, toxic halogen derivates						y	y		y	
Hydrogen cyanide				y		y	y	y	y	
Hydrogen cyanide, compounds of								y		
Hydrogen cyanide, preparations of								y		
Hydrogen cyanide, toxic derivatives of				y			y		y	
Hydrogen sulphide				y		y	y	y	y	
Hydroquinone										y
Hydroquinone, monobenzyl ether										y
Hydroquinone, monobutyl ether										y
Infectious agents						y			y	
Ionising radiation						y	y		y	y
Iron oxide										y
Irritants				y					y	
Irritating dust				y						
Irritating fumes				y						
Irritating gases				y						
Irritating solids				y						
Isocyanates										y
Jams, bottling of		y								
Jams, canning of		y								
Jams, preparation of		y								
Jams, preserving of		y								
Ketones				y		y			y	
Lasers				y						
Latex										y
Lead	s	s		y	s	y	y	s	y	y
Lead batteries	s									
Lead, alloys of	s									
Lead, compounds of	s	s		y	s			s		
Lead, ore of	s									
Lead, pigments of	s									
Lead, preparations of		s		y	s			s		
Lead, toxic compounds of						y	y		y	y
Leptospira microorganisms	y	y		y	y		y			
Manganese						y	y	s	y	y
Manganese, compounds of								s		
Manganese, preparations of								s		
Manganese, toxic compounds of						y	y		y	y
Matter, capable of causing pneumoconiosis								y		
Meat		s			y, s		y			
Meat, products of		s			s					
Mercury	s	s		y	s	y	y	s	y	y
Mercury fulminate	s									
Mercury pumps	s									

Agent	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	C'th	NZ
Mercury, amalgam of	s									
Mercury, compounds of	s	s		y	s			s		
Mercury, ore of	s									
Mercury, preparations of		s		y	s			s		
Mercury, toxic compounds of						y	y		y	y
Metal					y					
Methylene chloride										y
Mineral dusts				y						
Mineral matter		y		y						
Mineral oil	y	y		y	y	y	y	y	y	y
Mineral oil, compounds of	y	y		y	y	y	y	y	y	y
Mineral oil, products of	y	y		y	y	y	y	y	y	y
Mineral oil, residues of	y	y		y	y	y	y	y	y	y
Minerals other than arsenic, phosphorus, lead, mercury				y						
Minerals other than arsenic, phosphorus, lead, mercury, compounds of				y						
Minerals other than arsenic, phosphorus, lead, mercury, preparations of				y						
n-hexane										y
Nickel										y
Nitric acid					s			s		
Nitric acid esters, other than nitroglycerine						y	y		y	
Nitrogen						y				
Nitroglycerine						y	y		y	
Nitrous fumes				y	s	y				
N,N-bis(2-chloroethyl)-2-naphthylamine										y
Organic dust				y					y	y
Organic solvents										y
Organophosphate pesticides										y
Oxides of nitrogen								s		
Para-amyphenol										y
Paraffin	y	y		y	y			y		
Paraffin, compounds of	y	y		y	y			y		
Paraffin, products of	y	y		y	y			y		
Paraffin, residues of	y	y		y	y			y		
Parasitic agents						y			y	
Para-tertiary-butylcatechol										y
Para-tertiary-butylphenol										y
Petroleum distillates										y
Phosphorus	s	s		y	s	y	y	s	y	y
Phosphorus, compounds of	s	s		y	s			s		
Phosphorus, preparations of		s		y	s			s		
Phosphorus, toxic compounds of						y	y		y	y
Physical agents									y	
Pickles, bottling of		y								
Pickles, canning of		y								
Pickles, preparation of		y								

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Agent	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	C'th	NZ
Pickles, preserving of		y								
Pitch	y	y		y	y	y	y	y	y	y
Pitch, compounds of	y	y		y	y	y	y	y	y	y
Pitch, products of	y	y		y	y	y	y	y	y	y
Pitch, residues of	y	y		y	y	y	y	y	y	y
Plant allergens										y
Polycyclic aromatic hydrocarbons										y
Potassium bichromate		s		y	s			s		
Potassium bichromate, preparations of		s		y	s			s		
Pressure, greater than atmospheric		y				y	y		y	
Pressure, less than atmospheric						y				
Radioactive substances, other than radium	y	y			y			y		
Radium	y	y			y			y		
Radon										y
Rays				y						
Red pine dust					y					
Repetitive movements								y		
Resins										y
Rickettsia burneti	y	y			y		y	y		
Rubber additives										y
Sauces, bottling of		y								
Sauces, canning of		y								
Sauces, preparation of		y								
Sauces, preserving of		y								
Sclerogenic mineral dust							y		y	y
Sensitizing agents				y					y	y
Shale oil										y
Silica dust		y	y			y				y
Sisal dust				y			y		y	y
Soaps										y
Sodium bichromate		s		y	s			s		
Sodium bichromate, preparations of		s		y	s			s		
Solvents										y
Soot										y
Stone					y					
Styrene										y
Sulphuric acid mists										y
Sunlight				y						
Tar	y	y		y	y	y	y	y	y	y
Tar, compounds of	y	y		y	y	y	y	y	y	y
Tar, products of	y	y		y	y	y	y	y	y	y
Tar, residues of	y	y		y	y	y	y	y	y	y
Tin										y
Toluene										y
Trichloroethylene										y
Trinitrotoluene (TNT)				y						
Trinitrotoluene (TNT), compounds of				y						
Trinitrotoluene (TNT), preparations of				y						
Tungsten										y

Agent	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	C'th	NZ
Vanadium								s		
Vanadium, compounds of								s		
Vanadium, preparations of								s		
Vegetable matter		y		y						
Vibration							y		y	
Vibration of arm										y
Vibration of hand										y
Vinyl chloride monomer										y
Welding fumes										y
Western red cedar dust					y					
White spirit										y
Wood dust										y
X-rays	y	y			y			y		
Xylene										y
Zinc		s			s			s		
Zinc (old)	s									
Zinc, compounds of		s			s			s		
Zinc, preparations of		s			s			s		

y = yes, s = yes and sequelae

5.4 Definition of Permanent Impairment

Pre-requisite 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 AMA Guides, scheme legislation also provides substantive guidance on how to determine whether an impairment is *permanent*. Table 5.12 lists the legislative definitions of *permanent impairment* and also the criteria by which an injury is judged to be permanent.

Table 5.12 – Statutory definitions of permanent impairment as at 30 June 2009

Jurisdiction	Definition of 'permanent' and 'impairment'	Statutory criteria for determining whether an impairment is permanent
New South Wales	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%WPI in the ensuing 12 months with or without further medical treatment (i.e. further recovery or deterioration is not anticipated).	Section 65 and 65A of the Workers Compensation Act 1987
Victoria	As per AMA Guides	Section 91 (1A) <i>Accident Compensation Act 1985</i> Despite anything to the contrary in the AMA Guides, an assessment under subsection (1) of the degree of impairment resulting from

Jurisdiction	Definition of 'permanent' and 'impairment'	Statutory criteria for determining whether an impairment is permanent
		<p>an injury must be made-</p> <p>(a) after the injury has stabilised and</p> <p>(b) subject to subsection (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</p> <p>Section 91 (1B) <i>Accident Compensation Act 1985</i></p> <p>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-</p> <p>"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>
Queensland	<p><i>Workers' Compensation and Rehabilitation Act 2003:</i></p> <p>38 Meaning of permanent impairment</p> <p>A permanent impairment, from injury, is an impairment that is stable and stationary and not likely to improve with further medical or surgical treatment.</p>	<p><i>Workers' Compensation and Rehabilitation Act 2003:</i></p> <p>179 Assessment of permanent impairment</p> <ol style="list-style-type: none"> 1. 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. 2. The insurer must have the degree of permanent impairment assessed— <ol style="list-style-type: none"> (a) for industrial deafness—by an audiologist; or (b) or a psychiatric or psychological injury—by a medical assessment tribunal; or (c) for another injury—by a doctor. 3. 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— <ol style="list-style-type: none"> (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. <p><i>Workers' Compensation and Rehabilitation Regulation 2003:</i></p> <ul style="list-style-type: none"> - Division 3, Entitlement to compensation for permanent impairment - Schedule 2, Table of injuries

Jurisdiction	Definition of 'permanent' and 'impairment'	Statutory criteria for determining whether an impairment is permanent
Western Australia	No statutory definition.	No statutory criteria for determining whether impairment is permanent – this is based on medical opinion.
South Australia	<p>The WorkCover Guidelines state:</p> <p>“The meaning given to the word ‘permanent’ in various decisions of the courts includes:</p> <ul style="list-style-type: none"> a) for a long and indeterminate time but not necessarily forever b) more likely than not to persist in the foreseeable future.” <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>WRCA:</p> <p>43A(2) An assessment—</p> <ul style="list-style-type: none"> (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.
Tasmania	<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 in future months regardless of treatment being undertaken or that will be undertaken.”</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.(currently 30% WPI)</p>	No statutory criteria
Northern Territory	<p>Section 70 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><i>Workers Rehabilitation and Compensation Act Regulations, regulation 9</i> 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>
Australian Capital Territory	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,	Part 4.4 <i>Workers Compensation Act 1951</i>

Jurisdiction	Definition of 'permanent' and 'impairment'	Statutory criteria for determining whether an impairment is permanent
	damage, impairment, disfigurement or disease lists in Schedule 1 of the Workers Compensation Act 1951.	
Commonw'lth	<p>Comcare:</p> <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>Seacare:</p> <p>s3: 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>MRCS:</p> <p><i>Military Rehabilitation and Compensation Act 2004</i></p> <p>S68(1)(b)(ii): permanent means likely to continue indefinitely</p> <p>S5: 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.</p>	<p>Comcare:</p> <p><i>Safety, Rehabilitation and Compensation Act (1988)-</i></p> <p>s24(2): For the purpose of determining whether an impairment is permanent, Comcare shall have regard to:</p> <ul style="list-style-type: none"> 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>Seacare:</p> <p>s39(2) For the purpose of determining whether an impairment is permanent, the employer must have regard to the following matters:</p> <ul style="list-style-type: none"> 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; d) any other relevant matters. <p>MRCS:</p> <p><i>Military Rehabilitation and Compensation Act 2004</i></p> <p>s73: Deciding whether an impairment is likely to continue indefinitely</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"> a) the duration of the impairment; and b) the likelihood of improvement in the one or more service injuries or diseases concerned; and c) whether the person has undertaken all reasonable rehabilitative treatment for the impairment; and d) any other relevant matters.
New Zealand	IPRC Act 2001 defines 'impairment as "a loss, a loss of use, or derangement of any body part, organ system or organ function."	Requires permanence and stability of condition being assessed by a medical practitioner; or after two years since the date of injury, a medical practitioner certifying that the

Jurisdiction	Definition of 'permanent' and 'impairment'	Statutory criteria for determining whether an impairment is permanent
		claimant's condition has not stabilised, but it is likely that there is permanent impairment resulting from the injury.

5.4.1 Industrial deafness

Industrial deafness is generally examined separately from other forms of injuries, as it is:

- a unique injury
- an easily identifiable injury, and
- manageable, while not treatable.

All jurisdictions except New Zealand 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 5.13 illustrates the industrial deafness provisions in each jurisdiction.

Table 5.13 – Industrial deafness provisions as at 30 June 2009

Jurisdiction	Industrial deafness provisions
New South Wales	At least 6% total hearing loss: – s69A (1987 Act)
Victoria	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, s98C
Queensland	Not for the first 5%: – s125
Western Australia	At least 10% hearing loss for first election: – s24A Further 5% for subsequent elections: – s24A
South Australia	A lump sum for non-economic loss is only payable if there is a 5% or greater whole person impairment. There are no specific thresholds relating to hearing loss.
Tasmania	5% binaural hearing impairment: – s72A(3))
Northern Territory	Impairments no less than 5%: – s70
Australian Capital Territory	6% hearing loss (boilermakers deafness or similar deafness): – s64(1)
Commonwealth	Comcare: binaural hearing loss of 5%: – s24(7A) Seacare: 10% hearing loss: – s39(7) MRCS: at least 5 impairment points hearing loss: – s69(a).
New Zealand	No specific threshold in legislation for industrial deafness

5.4.2 Modifications to AMA Permanent Impairment Guidelines

Each of the schemes listed below 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 5.14 illustrates the particular approach taken by the various schemes to substitute or remove assessment criteria from the Guide.

Table 5.14 – Permanent Impairment Guides, as at 30 June 2009

Jurisdiction	Edition of AMA	Format	Substituted/removed	Authorisation of the Guide
New South Wales	5 th Ed.	Modifier ¹	<p>WorkCover Guides for the Evaluation of Permanent Impairment modify several Chapters in AMA5</p> <p>Removed: Ch18 Pain</p> <p>Substituted:</p> <ul style="list-style-type: none"> • AMA 4 – Vision • Ch 11 WorkCover Guides for the Evaluation of PI 3rd Edition Psychiatric and Psychological Disorders • 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, <i>Improved Procedure for Determining Percentage Loss of Hearing</i>, January 1988. 	Section 376 of the Workplace Injury Management And Workers Compensation Act 1998
	4 th Ed.	Designator ²	<p>Statutory removal: Chapter 15 Pain</p> <p>Statutory Guideline Substitutions: Chapter 9 section 9.1a Hearing replaced with the <i>Improved Procedures for Determination of Percentage Loss of Hearing</i> (1988 Edition or later prescribed edition).</p> <p>Chapter 14 Mental and Behavioural Disorders replaced with <i>The Guide to the Evaluation of Psychiatric Impairment for Clinicians</i>.</p> <p>Omit from section 3.3d 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</p>	<p>Section 91(8) <i>Accident Compensation Act 1985</i></p> <p>Section 91(4) <i>Accident Compensation Act 1985</i></p> <p>Section 91(6) <i>Accident Compensation Act 1985</i></p> <p>Section 91(1B) <i>Accident Compensation Act 1985</i></p> <p>Section 91(1A) <i>Accident Compensation Act 1985</i></p>
Victoria				

Jurisdiction	Edition of AMA	Format	Substituted/removed	Authorisation of the Guide
			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. Statutory Guideline Extensions : Impairment Assessment in Workers with Occupational Asthma. Clinical Guidelines to the Rating of Impairments arising from Infectious Occupational Diseases	Section 91(6A) <i>Accident Compensation Act 1985</i> Section 91(6B) <i>Accident Compensation Act 1985</i>
Queensland	4 th Ed.	Modifier		<i>Workers' Compensation and Rehabilitation Regulation 2003</i>
Western Australia	5 th Ed.	Modifier	Chapter 14 AMA5 – Mental and behavioural disorder replaced with chapter in WorkCover WA Guides on Psychiatric Impairment Rating Scale (PIRS). Chapter 18 AMA5 regarding assessment of pain is excluded. Vision – based on AMA 4 th Ed. Hearing loss – continues to be assessed based on sections 24A & 31E and Schedule 7 of the <i>Workers' Compensation and Injury Management Act 1981</i> .	<i>Workers' Compensation and Injury Management Act 1981</i> Section 146R WorkCover Guides WorkCover WA may issue directions with respect to the evaluation of degree of impairment. 1. The directions, and any amendment of them, are to be developed in consultation with an advisory committee appointed under section 100A for the purposes of this section. 2. 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. 3. Section 41, 42, 43 and 44 of the <i>Interpretation Act 1984</i> apply to the directions as if they were regulations.
South Australia	5 th Ed.	Modifier	N/A	The WorkCover Guidelines are published in the South Australian Government Gazette under section 43A(3) of the <i>Workers Rehabilitation and Compensation Act 1986</i> .
Tasmania	4 th Ed.	Modifier	WorkCover Tasmania Guidelines modify several chapters in AMA4 Removed: Ch 15 Pain Substituted	Section 72(1) An assessment of a degree of impairment is to be undertaken by a medical assessor in accordance with- (a) any relevant guidelines issued by the Board; (b) if there are no such guidelines, the AMA Guides; or (c) if there are no such guidelines and the AMA Guides are not applicable or are unsuitable, any method as may be prescribed.

Jurisdiction	Edition of AMA	Format	Substituted/removed	Authorisation of the Guide
			<p>Ch 7 of WorkCover Tasmania Guides (Mental and Behavioural Disorders) incorporating the Psychiatric Impairment Rating Scale (PIRS) is substituted for chapter 14 AMA 4.</p> <p>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, <i>Improved Procedure for Determining Percentage Loss of Hearing</i>, January 1988</p> <p>Guidelines (and leg) require the level of binaural hearing impairment to be converted to WPI.</p>	
Northern Territory	4 th Ed.	Designator	N/A	
Australian Capital Territory	4 th & 5 th Ed.	Standalone (authorised by the Regs)	<p>WorkCover Guides for the Evaluation of Permanent Impairment (1st Ed) modify several Chapters in AMA5</p> <p>Removed: Ch18 Pain Vision Ch 14 Mental and Behavioural Disorders</p> <p>Substituted:</p> <ul style="list-style-type: none"> • AMA 4 – Vision • Ch 11 - Psychiatric and Psychological Disorders <p>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, <i>Improved Procedure for Determining Percentage Loss of Hearing</i>, January 1988.</p>	Reg 5(1)(b) of the Workers Compensation Regulation 2002 allows the Minister to approve medical guidelines.

Jurisdiction	Edition of AMA	Format	Substituted/removed	Authorisation of the Guide
Commonwealth	Comcare: 5 th Ed.	Comcare: Stand-alone ₃	Comcare: Removed- Ch. 18 (Pain) Substituted in whole- Ch. 12 (The Visual System) and Ch.14 (Mental and Behavioural Disorders) Substituted in part- Ch. 11 (Ear, Nose, Throat, and related Structures) Comcare's <i>Guide to the Assessment of the Degree of Permanent Impairment (2nd Ed)</i> , lists substitutions made to AMA 5 in <i>Principles of Assessment</i> (full text of the relevant section contained below). Part 1 Principles of Assessment 12. Exceptions to the use of Part 1 of this <i>Guide</i> An assessment is not to be made using the American Medical Association's Guides to the Evaluation of Permanent Impairment for: - mental and behavioural impairments; - impairments of the visual system; - hearing impairment; or - chronic pain conditions except in the case of migraine or tension headaches.	Comcare: <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: (a) criteria by reference to which the degree of the permanent impairment of an employee resulting from an injury shall be determined; (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 (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. Seacare <i>Seafarers Rehabilitation and Compensation Act (1992)-</i> s39(5): 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. s42(1): 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: (a) criteria by reference to which the degree of the permanent impairment of an employee resulting from an injury must be determined; and
	Seacare: Identical to Comcare	Seacare: Identical to Comcare	Seacare: Identical to Comcare	

Jurisdiction	Edition of AMA	Format	Substituted/removed	Authorisation of the Guide
	<p>MRCS: 4th Ed.</p>	<p>MRCS: Stand-alone GARP V (M)) does not allow recourse to the AMA Guides in the event that an impairment cannot be measured under GARP V (M).</p>	<p>MRCS: Substituted in whole.</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 must 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, must be expressed as a percentage.</p> <p>MRCS: <i>Military Rehabilitation and Compensation Act 2004</i></p> <p>S5: <i>impairment points</i> of a person means the points worked out for the person using the guide determined under section 67.</p> <p>s67(1): The Commission may determine, in writing, a guide setting out:</p> <p>(a) criteria to be used in deciding the degree of impairment of a person resulting from a service injury or disease; and</p> <p>(b) methods by which the degree of that impairment can be expressed in impairment points on a scale from 0 to 100; and</p> <p>(c) criteria to be used in assessing the effect of a service injury or disease on a person's lifestyle; and</p> <p>(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</p> <p>(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 this Part by reference to the maximum compensation that can be payable to a person under this Part.</p>
New Zealand	4 th Ed.	Designator Modifier	<p>AMA 4th Edition ACC User Handbook. This takes precedence over the AMA 4th Edition</p>	<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>

Jurisdiction	Edition of AMA	Format	Substituted/removed	Authorisation of the Guide
				<p>(1) 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— (a) the American Medical Association 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 American Medical Association Guides to the Evaluation of Permanent Impairment (Fourth Edition).</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 AMA 5 (as noted in this table) in a *stand-alone* document known as the Guide to the Assessment of the Degree of Permanent Impairment. Section 28 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.

5.4.3 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 5.15 lists the discounting provisions under each scheme

Table 5.15 – Discounting of prior conditions

Jurisdiction	Threshold test	Waiting period	Permits discounting?	Relevant section of legislation, regulation or statutory instrument
New South Wales	<p>>0% WPI, except for:</p> <p>15% WPI for psychiatric and psychological impairment</p> <p>6% binaural hearing loss for hearing loss claims</p> <p>Entitlement to pain and suffering payment: 10% WPI for physical injuries, 15% WPI for psychiatric and psychological injuries</p> <p>Entitlement to claim under Common Law: 15% WPI</p>	No waiting period	Yes	<p>AMA5 Section 1.6, p 11; s323 WIM Act 1998</p> <p>The degree of permanent impairment resulting from pre-existing impairments should not be included within the degree of permanent impairments determined by an assessor if those impairments are unrelated or not relevant to the impairment arising from the relevant work injury.</p> <p>In assessing the degree of permanent impairment resulting from the work injury, the assessor is to indicate the degree of impairment due to any previous injury, pre-existing condition or abnormality. This proportion is known as “the deductible proportion”. The deductible portion should be deducted from the degree of permanent impairment determined by the assessor.</p> <p>If the degree of deduction will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed that the deduction of the relevant part of it is one tenth of the assessed impairment, unless this is at odds with the available evidence.</p>
Victoria	<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	<p>As per AMA Guides page 10 subtraction of unrelated impairment</p> <p>Section 91(7)(c) <i>Accident Compensation Act 1985</i>. Impairment from unrelated injuries or causes must be disregarded in making an assessment</p>
Queensland	<p>>0% WRI, generally</p> <p>5% WRI for hearing loss</p> <p>15% WRI + demonstrated eligibility to</p>	No waiting period	Yes	Schedule 2 (Table of Injuries) of the <i>Workers' Compensation and Rehabilitation Regulation 2003</i>

Jurisdiction	Threshold test	Waiting period	Permits discounting?	Relevant section of legislation, regulation or statutory instrument
	qualify for gratuitous care entitlement 30% WRI to qualify for additional lump sum entitlement			
Western Australia	>0% WPI, except for: 10% WPI for initial noise induced hearing loss (NIHL) & 5% for subsequent NIHL	No waiting period.	Yes	<p>Section 146A(4) (Evaluation of impairment generally) "For a case in which the evaluation of the degree of impairment of the worker involves taking into account a recurrence, aggravation, or acceleration of any pre-existing disease that was to any extent asymptomatic before the event from which the injury or injuries arose, the WorkCover Guides are not to provide for a deduction to reflect the pre-existing nature of that disease to the extent that it was asymptomatic before that event."</p> <p>WorkCover WA Guides 2nd Ed. 3.52 "For any disease that was symptomatic before the event from which the injury or injuries arose there may be a "deductible portion" in the degree of impairment. Where it is not possible to determine whether a deduction should apply then no deduction should be made. In each case the basis for the judgement and deduction should be clearly explained in the approved medical specialist report.</p>
South Australia	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	Yes	<p>If the current compensable disability consists of an aggravation, acceleration, exacerbation, deterioration or recurrence of the previous compensable disability and the worker has been paid compensation by way of a lump sum under section 43 of the Act, or a corresponding previous enactment for that prior compensable disability, the medical practitioner is to provide a %WPI assessment for the current and prior compensable disabilities. A worker who has received lump sum compensation under section 43 of the Act or a corresponding previous enactment for such prior compensable disability, will have a reduction made from the lump sum payable pursuant to section 43 (if the %WPI exceeds 5%) by the amount of the previous lump sum payment as required by section 43(7) of the Act.</p>

Jurisdiction	Threshold test	Waiting period	Permits discounting?	Relevant section of legislation, regulation or statutory instrument
		anticipated, but can include temporary fluctuations).		
Tasmania	<p>5% WPI, except for:</p> <p>0% WPI for a finger or toe</p> <p>10% WPI for Psychological injuries</p> <p>>5% binaural hearing impairment WPI = 5 + [0.278 (BHI - 5)] % WPI : – reg. 17 & s73(4)</p> <p>>75% WPI receives maximum entitlement</p>	No waiting period	Apportionment	<p>As per AMA4 Guides page 10, subtraction of pre-existing impairment.</p> <p>S 72(2) directs that: If worker presents with injuries that occurred on different dates, the impairments are to be assessed separately; and an impairment arising otherwise than from the injury is to be disregarded</p> <p>S73(2) (Industrial deafness) directs that: The degree of industrial deafness is not to include the percentage of deafness..</p> <ul style="list-style-type: none"> - to have arisen otherwise than from industrial deafness - to have been contracted outside the State - for which compensation has been awarded or paid under a law of the Commonwealth
Northern Territory	<p>5% WPI</p> <p>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</p> <p>>85% WPI receives maximum entitlement</p>	No waiting period	Apportionment	As per AMA 4, chapter 2.3, page 10, subtraction of unrelated impairment
Australian Capital Territory	<p>0% (no threshold)</p> <p>6% threshold for hearing loss (boilermaker's deafness)</p>	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-	Yes	Discounting permitted under s61. Assess amount of compensation payable for the loss. From that deduct an amount for any proportion of the loss attributable to a previous injury or pre-existing condition, injury or abnormality. If the extent of the deductible amount will be difficult or costly to be determined, it is to be assumed to be 10% of the compensable loss.

Jurisdiction	Threshold test	Waiting period	Permits discounting?	Relevant section of legislation, regulation or statutory instrument
		injury weekly hours for a period of at least three months.		
Commonwealth	Comcare: 10% Whole Person Impairment (WPI) 5% binaural hearing >0% Finger/toe, taste/smell Must qualify for PI to qualify for Non-economic loss payment	Comcare: No waiting period	Comcare: Yes	Comcare: SRC Act sections 24-27, and s28 provides that "Comcare ...may...prepare...a Guide". Comcare's <i>Guide</i> provides the following instructions to medical assessors: "4. Where a pre-existing or underlying condition is aggravated by a work-related injury, on the impairment resulting from the aggravation is to be assessed. However, an assessment should not be made unless the effects of the aggravation of the underlying or pre-existing condition are considered permanent. In these situations, the pre-existing or underlying condition would usually have been symptomatic prior to the work-related injury and the degree of permanent impairment resulting from that condition is able to be accurately assessed. If the employee's impairment is entirely attributable to the pre-existing or underlying condition, or to the natural progression of such a condition, the assessment for permanent impairment is nil. Where the pre-existing or underlying condition was previously asymptomatic, all the permanent impairment arising from the work-related injury is compensable." - Part 1, Principles of Assessment, in Guide to the Assessment of the Degree of Permanent Impairment (2nd Ed)
	Seacare: 10% Whole Person Impairment (WPI) 10% hearing >0% Finger/toe, taste/smell	Seacare: Identical to Comcare	Seacare: Identical to Comcare	Seacare: Identical to Comcare

Jurisdiction	Threshold test	Waiting period	Permits discounting?	Relevant section of legislation, regulation or statutory instrument
New Zealand	<p>Must qualify for PI to qualify for Non-economic loss payment</p> <p>MRCS:</p> <p>Initial compensation - 10 impairment points (IP),</p> <p>5 IPs hearing, fingers, toes, taste, and smell.</p> <p>Additional compensation - 5 IPs</p>	<p>MRCS:</p> <p>No waiting period</p>	<p>MRCS:</p> <p>Apportionment</p>	<p>MRCS:</p> <p>As per Chapter 19 'Partially Contributing Impairment', GARP V (M)</p>
	<p>10%</p>	<p>Independence allowance: Claimant suffered personal injury on or after 1 April 1974.</p> <p>At least one year after the date of the injury or condition has stabilised</p> <p>Lump sums: Claimant suffered personal injury on or after 1 April 2002. At least 2 years after day of the injury or condition stabilised</p>	<p>Yes - Apportionment</p>	<p>The ACC User handbook to the AMA guides 4th edition.</p> <p>Apportion – analyse the impairment that existed prior to the covered condition occurring by:</p> <ul style="list-style-type: none"> • Calculating pre-existing percentage (based on medical records) • Calculating the percentage that currently exists (from the combination of covered & non-covered conditions) <p>Deducting the pre-existing impairing to give the impairment apportioned to the covered condition.</p>

5.5 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 5.16 shows the general exclusionary provisions in each jurisdiction.

Table 5.16 – Exclusionary provisions (general) as at 30 June 2009

Jurisdiction	Exclusionary provisions
New South Wales	<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>Compensation is not payable:</p> <ul style="list-style-type: none"> • if the employment concerned was not a substantial contributing factor to the injury: – s9A(1) (1987 Act) • in respect of any injury to or death of a worker caused by an intentional self-inflicted injury: – s14(3) (1987 Act) • to a member of the Police Service who is a contributor to the Police Superannuation Fund under the <i>Police Regulation (Superannuation) Act 1906</i> – s4 (1998 Act) • to 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: – s4 (1998 Act) • to 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: – s4 (1998 Act) • except as provided by Schedule 1 (1998 Act), to a registered participant of a sporting organisation (within the meaning of the <i>Sporting Injuries Insurance Act 1978</i>) while: <ul style="list-style-type: none"> (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 <p>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 (1998 Act)</p>
Victoria	<p>If it is proved that an injury to a worker (whether or not intended to be inflicted) was deliberately or wilfully self-inflicted, compensation is not payable in respect of that injury: – s82(3),</p> <p>If it is proved that an injury to a worker is attributable to the worker's serious and wilful misconduct (including being under the influence of intoxicating liquor, or a drug) compensation shall not be payable in respect of that injury, unless the injury results in death or serious and permanent disablement: – s82(4) & s82(5).</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>
Queensland	<p>Compensation is not payable:</p> <ul style="list-style-type: none"> • for an injury sustained by a worker if the injury is intentionally self-inflicted: – s129

Jurisdiction	Exclusionary provisions
	<ul style="list-style-type: none"> 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) 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) <p>* WRI: – Work related impairment</p>
Western Australia	<p>If it is proved that the injury of a worker is attributable to their–</p> <ol style="list-style-type: none"> voluntary consumption of alcoholic liquor or of a drug of addiction, or both, which impairs the proper functioning of their faculties; 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 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 <p>Compensation is not payable:</p> <ul style="list-style-type: none"> 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 for an injury or death of a person before operation of Section 3 of the <i>Workers Compensation Act Amendment Act (No. 2) 1977</i>
South Australia	<p>Effect of misconduct etc: – s30B</p> <ol style="list-style-type: none"> 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 <ol style="list-style-type: none"> the worker is acting in contravention of a statutory or other regulation applicable to the employment; or the worker is acting without, or in contravention of, instructions from the employer However <ol style="list-style-type: none"> 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 section 30(3); and a disability is not compensable if it is established on the balance of probabilities that the disability is wholly or predominantly attributable to <ol style="list-style-type: none"> serious and wilful misconduct on the part of the worker; or 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) Subsection (2)(a) does not apply in a case of death or permanent total incapacity for work and subsection (2)(b) does not apply in a case of death or serious and permanent disability: – s30B(3)
Tasmania	<p>Compensation is not payable:</p> <ul style="list-style-type: none"> 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 if the injury is an intentional self-inflicted injury; or if the worker has the disease known as undulant fever or brucellosis, or any other disease where the worker has wilfully and falsely represented themselves in writing as not having suffered from the disease: – s25(2) <p>The Act does not apply to any person –</p> <ol style="list-style-type: none"> whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business; or who is an outworker; or 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 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 notwithstanding section s4D, who is participating in an approved program of work

Jurisdiction	Exclusionary provisions
	for unemployment payment under the <i>Social Security Act 1991 of the Commonwealth</i> – <ul style="list-style-type: none"> and no such person shall be deemed to be a worker within the meaning of this Act: – s4(5)
Northern Territory	<p>Compensation is not payable in respect of an injury to a worker that was deliberately self-inflicted or attributable to his or her serious and wilful misconduct, unless the injury results in his or her death or permanent or long term incapacity: – s57(1)</p> <p>Compensation is not payable unless any 2 of the following apply:</p> <ol style="list-style-type: none"> the worker to or in relation to whom it is payable was a resident of the Territory at the time the relevant incident occurred his or her employer was a resident of or carrying on business in the Territory at the time the relevant incident occurred; or the relevant incident occurred in the Territory: –s57(2) <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> <p>Employees of 'approved' labour hire firms are not seen as workers: – Reg 3A</p>
Australian Capital Territory	<p>Compensation is not payable if the injury to, or death of, the worker is caused by:</p> <ul style="list-style-type: none"> an intentionally self-inflicted injury: – s82(2) the worker's serious and wilful misconduct, unless the injury results in the death or serious and permanent disablement: – s82(3) the worker being imprisoned: – s83 his or her engagement in professional sporting activity: – s84
Commonwealth	<p>Comcare: Compensation is not payable in respect of:</p> <ul style="list-style-type: none"> any period during which the worker is imprisoned: – s23(2) 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) 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) an injury that is intentionally self-inflicted: – s14(2) 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) & s14(3) or if the employee sustains an injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury: – s6(3) <p>Seacare: Compensation is not payable in respect of:</p> <ul style="list-style-type: none"> any period during which the employee is imprisoned – s38(3) an injury that is intentionally self-inflicted 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 & s26(3) where a worker made a wilful and false representation that he/she suffered from a disease or an aggravation of a disease: – s10(7) <p>MRCS: Compensation is not payable in respect of:</p> <ul style="list-style-type: none"> 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 - s32 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 - s33 a wilful and false representations in connection with service - s34 an injury, disease, or death that results from a substantial delay commencing

Jurisdiction	Exclusionary provisions
	<p>journey, routes that are not reasonably direct, and substantial interruptions to journeys - s35</p> <ul style="list-style-type: none"> injury, disease, or death that results from the use of tobacco products - s36
New Zealand	<p>Compensation is not payable:</p> <ul style="list-style-type: none"> where the claimant become 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 where the claimant is in prison. – s120 <p>ACC can apply to the courts to have any entitlements denied if the claimant suffered the personal injury in the course of committing an offence and is sentenced to prison.: – s122</p>

5.6 Exclusionary provisions –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 redeployment. 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 5.17 lists the exclusionary provisions for psychological injuries, the threshold level of impairment and the diagnostic methodology of assessment.

Table 5.17 – Exclusion provisions for psychological injuries

Jurisdiction	Exclusionary provisions for psychological injuries	Impairment threshold	Diagnostic methodology of assessment
New South Wales	<p>s11A(1) (1987 Act) -</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." –</p> <p>Section 65A</p> <p>"(1) No compensation is payable ... (either as permanent impairment compensation or pain and suffering compensation) in respect of permanent impairment that results from a secondary psychological injury.</p> <p>Note: This does not prevent a secondary psychological injury from being compensated under section 67 as pain and suffering resulting from permanent impairment (but only if that permanent impairment results from a physical injury or a primary psychological injury).</p> <p>(2) In assessing the degree of permanent impairment that results from a physical</p>	15% WPI for a primary psychological injury	Ch 11 WorkCover Guides for the Evaluation of Permanent Impairment, using the Psychiatric Impairment Rating Scale (PIRS)

Jurisdiction	Exclusionary provisions for psychological injuries	Impairment threshold	Diagnostic methodology of assessment
	<p>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 ... (either as permanent impairment compensation or pain and suffering compensation) 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, section 322 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 ... in respect of impairment resulting from one of those injuries, and for that purpose the following provisions apply:</p> <ul style="list-style-type: none"> i. 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 ii. the worker is entitled to receive compensation ... for impairment resulting from whichever injury results in the greater amount of compensation being payable to the worker ... (and is not entitled to receive compensation ... for impairment resulting from the other injury), iii. the question of which injury results in the greater amount of compensation is, in default of agreement, to be determined by the Commission. <p>Note: If there is more than one physical injury those injuries will still be assessed together as one injury under section 322 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."</p>		
Victoria	<p>Compensation is not payable in respect of an injury consisting of an illness or disorder of the mind caused by stress unless the stress did not arise wholly or predominately from:</p> <p>(a) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, redeploy, retrench or dismiss the</p>	30% WPI – not arising secondary to physical injury	The Guide to the Evaluation of Psychiatric Impairment for Clinicians (GEPIC)

Jurisdiction	Exclusionary provisions for psychological injuries	Impairment threshold	Diagnostic methodology of assessment
	<p>worker; or</p> <p>(b) a decision of the employer, on reasonable grounds, not to award or to provide promotion, reclassification or transfer, or leave of absence or benefit in connection with the employment, to the worker; or</p> <p>(c) an expectation of the taking of such action or making of such a decision: – s82(2A).</p>		
Queensland	<p>An injury does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances:</p> <p>(a) Reasonable management action taken in a reasonable way by the employer in connection with the worker's employment</p> <p>(b) The worker's expectation or perception of reasonable management action being taken against the worker</p> <p>(c) Action by the Authority or an insurer in connection with the worker's application for compensation</p> <p>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)</p>	None	AMA Guide (4th Edition)
Western Australia	<p>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)</p> <p>"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. Secondary conditions are not included for the purposes of assessing impairment for common law, specialised retraining programs of payments of additional expenses.</p>		WorkCover WA Guides 2 nd Ed. Psychiatric Impairment Rating Scale (PIRS).
South Australia	<p>30A—Psychiatric disabilities</p> <p>A disability consisting of an illness or disorder of the mind is compensable if and only if—</p> <p>(a) the employment was a substantial cause of the disability; and</p> <p>(b) the disability did not arise wholly or predominantly from—</p> <p>(i) reasonable action taken in a reasonable manner by the employer to transfer,</p>	N/A	N/A

Jurisdiction	Exclusionary provisions for psychological injuries	Impairment threshold	Diagnostic methodology of assessment
	<p>demote, discipline, counsel, retrench or dismiss the worker; or</p> <p>(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</p> <p>(iii) reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment; or</p> <p>(iv) reasonable action taken in a reasonable manner under this Act affecting the worker.</p> <p>In addition, a permanent impairment benefit does not arise under section 43 in relation to a psychiatric impairment.</p>		
Tasmania	<p>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:</p> <p>(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</p> <p>(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</p> <p>(iii) Reasonable administrative action taken in a reasonable manner by an employer in connection with a worker's employment</p> <p>(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</p> <p>(v) reasonable action taken by an employer under this Act in a reasonable manner affecting a worker: – s25(1A)</p>	10% WPI	Ch 7 WorkCover Tasmania Guidelines, using the Psychiatric Impairment Rating Scale (PIRS)
Northern Territory	<p>Compensation is not payable if the injury is:</p> <p>(a) Due to reasonable disciplinary action</p> <p>(b) Due to failure to obtain promotion, transfer or benefit; or</p> <p>caused as a result of reasonable administrative action taken in connection with the worker's employment: – s3(1)</p>	5% WPI NB: physical and psychological are combined	AMA 4
Australian Capital Territory	<p>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)</p>	0% WPI	Ch 11 WorkCover Guides for the Evaluation of Permanent Impairment, using the Psychiatric Impairment Rating Scale (PIRS)

Jurisdiction	Exclusionary provisions for psychological injuries	Impairment threshold	Diagnostic methodology of assessment
Commonwealth	Comcare: 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) Due to the worker making a false representation, connected with their employment: – s7(7)	Comcare: 10% WPI	Comcare: American Medical Association Guidelines to the Evaluation of Permanent Impairment (2nd Edition), Ch. Mental Conditions.
	Seacare: 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	Seacare: 10% WPI	Seacare: American Medical Association Guidelines to the Evaluation of Permanent Impairment (2nd Edition), Ch. Mental Conditions.
	MRCS: Psychological injuries are not treated any differently than other injuries or diseases.	MRCS: Initial compensation - 10 impairment points (IP). Additional compensation - 5 IPs	MRCS: As per Chapter 4 "Emotional and Behavioural", GARP V (M).
New Zealand	Cover does not exist for mental injuries if the mental injury is not caused by physical injuries: – s26(1)(c), or as a consequence of certain criminal acts: – s21		

5.7 Retirement provisions

Most jurisdictions have retirement provisions which restrict access to workers' compensation, in particular income replacement payments, when a worker reaches the age of 65. Once an injured worker reaches the retirement age of 65 and has access to their superannuation or other forms of income support, such as the age pension, there is a commensurate decrease in compensation payments. Table 5.18 outlines each jurisdiction's retirement provisions.

Table 5.18 – Retirement provisions as at 30 June 2009

Jurisdiction	Retirement provisions
New South Wales	'Retiring age', in relation to a person, means the age at which the person would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the Commonwealth <i>Social Security Act 1991</i> . If injury occurs before retiring age: –

Jurisdiction	Retirement provisions
	weekly compensation made until first anniversary of the 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 (1987 Act)
Victoria	<p>Normally, the earlier of age 65 or normal retirement age for the worker's occupation except in the following circumstances.– s93F</p> <p>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</p> <p>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 compensation for a limited period of up to 13 weeks - s93EA</p>
Queensland	No retirement provision referred to in the Act.
Western Australia	If injury occurs on or before 64, compensation ceases at 65. If injury occurs after 64, compensation ceases a year after date of injury: – s56
South Australia	Weekly compensation payments are not payable after the worker reaches retirement age unless worker is within 2 years of retirement age or above retirement age in which case weekly payments are payable for a period of incapacity falling within 2 years after the commencement of the incapacity (s35 (2) and (3)).
Tasmania	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
Northern Territory	Weekly compensation generally stops when the person reaches the retirement age of 65. If the normal retiring age for workers in the industry at the time of injury is more than 65 – until the worker attains that normal retiring age: – s65. If injury occurs after age 65, then 26 weeks at 100% normal weekly earnings:- s64.
Australian Capital Territory	If injury occurs before 63 – compensation is payable until the worker reaches 65. If injury occurs after 63 – for two years after incapacity date: – s39(3b) and s40(4).
Commonwealth	<p>Comcare: Compensation is not 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: – s23</p> <p>Seacare: 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</p> <p>MRCS: Compensation in the form of income replacement is not payable to an employee/former member who has reached 65, however if an employee/former member who has reached 63 suffers an injury, compensation is payable for a maximum of 104 weeks: – s121</p>
New Zealand	<p>Weekly compensation generally stops when the person reaches retirement age of 65. If injury occurs between 24 and 12 months prior to 65, weekly compensation can be paid for 24 months from the start date.</p> <p>If incapacitated within 12 months prior to 65, or after reaching 65, weekly compensation can be paid as well as superannuation until the later of:</p> <ul style="list-style-type: none"> • 65 date • the first date of entitlement to weekly compensation.

Jurisdiction	Retirement provisions
	After those 52 weeks, they can choose either weekly compensation or national superannuation for a further year. Weekly compensation stops after that further year: – Schedule 1, Part 2, 52

5.8 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* which are based on the National Cross-Border Model developed by 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 5.19 shows the status of implementation of the national cross-border model in each jurisdiction.

Table 5.19 – Cross-border provisions as at 30 June 2009

Jurisdiction	Cross-border provisions
New South Wales	National cross-border model implemented on 1 January 2006.
Victoria	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 to Victoria as defined.
Queensland	National cross-border model implemented as at 1 July 2003.
Western Australia	National cross-border model implemented 22 December 2004.
South Australia	National cross-border model commenced in South Australia on 1 January 2007.
Tasmania	National cross-border model implemented from December 2004.
Northern Territory	National cross-border model implemented from 26 April 2007.
Australian Capital Territory	National cross-border model implemented on 3 June 2004.

Jurisdiction	Cross-border provisions
Commonwealth	<p>Comcare and MRCS: There are no formal cooperative arrangements with other jurisdictional compensation authorities, as the Commonwealth scheme does not operate on a geographical basis.</p> <p>Seacare: State/Territory compensation schemes have no application if Seafarers Act applies.</p>
New Zealand	<p>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.</p>

6. 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 whilst 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 benefits
- death benefits, and
- other benefits.

6.1 Income replacement payments

Income replacement payments (generally known as weekly payments) are periodic payments which an injured worker receives. They 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 whether the injured worker is *totally incapacitated* or has *no current work capacity* and unable to return to work, or *partially incapacitated* or has *current work capacity* where the injured worker can perform certain duties, and the degree of incapacity. Schemes have various arrangements whereby the amounts of entitlements change (generally decreasing) over time.

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. Step downs in payments are also an incentive for workers to return to work.

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 workers 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 insurers 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 6.1 shows the income replacement arrangements in each jurisdiction.

Table 6.1 - Income replacement payments as at 30 June 2009

Jurisdiction	Calculation	Settlement, Redemption, Commutation
New South Wales	<p>Part 3, Div 2 (1987 Act)</p> <p>Total Incapacity: < 26 weeks: 100% of worker's Current Weekly Wage Rate, or where no award/enterprise agreement, 80% of the average weekly earnings of the worker, excluding overtime and</p>	<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</p>

Jurisdiction	Calculation	Settlement, Redemption, Commutation
	<p>allowances (maximum weekly rate: \$1,654.40)</p> <p>> 26 weeks: the lesser of 90% of average weekly earnings or the statutory rate of \$389.10, plus the following additional amount for spouse and/or dependent children:</p> <ul style="list-style-type: none"> • spouse: \$102.60 • 1 child: \$73.30 • 2 children: \$164.00 • 3 children: \$271.60 • 4 children: \$382.00 • For each additional dependant child in excess of 4: \$110.20 <p>Partial Incapacity:</p> <p>< 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>> 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>< 26 weeks: maximum weekly benefit payment of \$1,654.40</p> <p>> 26 weeks: the lesser of the statutory rate or 90% of average weekly earnings</p> <p>> 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"> • is no longer job seeking • is unemployed mainly as a result of the labour market conditions, or • has unreasonably rejected an offer of suitable employment. <p>Benefits are indexed on 1 April and 1 October each year.</p>	<p>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"> • the injured worker has a permanent impairment that is at least a 15% whole person impairment • compensation for that permanent impairment and pain and suffering has been paid • the worker is currently eligible for ongoing weekly benefits and must have received weekly benefits regularly and periodically during previous six months • it is more than two years since worker first received compensation • injury management and return to work opportunities have been exhausted • weekly benefits have not been stopped or reduced as a result of the worker not seeking suitable employment. <p>Prior to receiving a commutation:</p> <ul style="list-style-type: none"> • the worker must receive independent legal and financial advice • the insurer, employer and worker must agree with the commutation • WorkCover must agree with the commutation • all agreements must be registered with the Workers' Compensation Commission: – Part 3, Div 9 (1987 Act) s87EA
Victoria	<p>Due to statutory changes to scheme on 12/11/97, benefit rates depend on date of entitlement</p> <p>Pre 12/11/97: Workers entitled to receive weekly benefits; old rates apply</p> <p>Post 12/11/97:</p> <p>First 13 weeks:</p> <p>95% of pre-injury average weekly earnings (PIA WE) (maximum: \$1250), less notional earnings: – s93CA</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>

Jurisdiction	Calculation	Settlement, Redemption, Commutation
	<p>> 13 weeks: If no current work capacity 75% of PIAWE; or if some work capacity either: (a) 75% of PIAWE less 75% of notional earnings, or (b) \$1250 less 75% of notional earnings, whichever is the lesser: – s93CB</p> <p>> 26 weeks: No further entitlement to compensation for overtime or shift allowance components of PIAWE: – s5A(1A), s5A(1B)</p> <p>> 130 weeks (Note for pre 1 Jan 2005 claim = 104 weeks): Weekly payments cease after 130 weeks of weekly payments unless: (a) worker is likely to have no current work capacity indefinitely- weekly payments continue while this is the case until retirement age: – s93CC; or (b) 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 \$146 per week: – s93CD</p>	
Queensland	<p>For the first 26 weeks: Workers under an industrial instrument s150(1)(a) – the greater of: a) 85% of the worker's normal weekly earnings (NWE); or b) amount payable under the worker's industrial instrument</p> <p>Workers not under an award or agreement s151(1)(b): – the greater of: a) 85% of NWE b) 80% of QOTE Queensland Ordinary Time Earnings (QOTE) is currently \$1132.10</p> <p>Workers on contract (s152(1)(a):- the greater of a) 85% NWE b) the amount payable under the worker's contract of service</p> <p>From the end of the first 26 weeks to the end of the first 2 years, whether or not worker is under an industrial instrument or contract s150(1)(b), s151(1)(b) and 152 (1)(b) - the greater of: a) 75% of the worker's NWE b) 70% of QOTE</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)(d), s151(1)(d) and 152(1)(d) - the greater of: a) 75% of the worker's NWE b) 70% of QOTE: – Workers with WRI less than or equal to 15%, receive an amount equal to the single pension rate. Total amount payable for weekly benefits is. \$224 710 (from 1 July 2009).</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: – Ch 3, Part 9, Div 7</p> <p>After a redemption payment has been made the worker has no further entitlement to compensation for the injury, including weekly benefits, and medical and rehabilitation expenses.</p>

Jurisdiction	Calculation	Settlement, Redemption, Commutation
Western Australia	<p>A cap on weekly payments of \$1904.40 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 <u>First 13 weeks of claim:</u> 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 \$1904.40. Overtime, bonuses or allowances are averaged over the 13 weeks before the disability occurred: – Schedule 1, clause 11(3)(a)</p> <p><u>14th week onward:</u> 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 \$1904.40. Subject to the cap of \$1904.40, 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 <u>First 13 weeks of claim:</u> 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 \$1904.40: – Schedule 1, clause 11(4)(a)</p> <p><u>14th week onward:</u> Weekly payments 'step down' to 85% of the worker's average weekly earnings; maximum payment is \$1904.40. Minimum rate: Subject to the cap of \$1904.40, 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 as a result of a permanent total or partial incapacity, 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 the Dispute Resolution Directorate 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>
South Australia**	<p>Cap of 2 x State average weekly earnings (\$2335.60 at 21/05/09).</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>< 13 weeks: 100% of the worker's Average Weekly Earnings (AWE).</p> <p>13 - 26 weeks: 90% of worker's AWE</p> <p>> 26 weeks: 80% of AWE.</p>	<p>South Australia offers redemptions, which are a lump-sum payment to effectively 'settle' and cease an injured worker's entitlement to ongoing compensation or rehabilitation support.</p> <p>Use of redemptions will only be allowed where it will not undermine the Scheme's primary focus on return to work, in circumstances where:</p> <ul style="list-style-type: none"> the worker has returned to work but has an ongoing entitlement

Jurisdiction	Calculation	Settlement, Redemption, Commutation
	<p>> 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.</p>	<p>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</p> <ul style="list-style-type: none"> the worker is 55 years of age or older and has no current work capacity exceptional circumstances apply where there is an overwhelming social interest in finalising the matter (as determined by the Workers Compensation Tribunal). <p>Redemptions are voluntary and can only take place through mutual agreement between the parties.</p>
Tasmania	<p>< 13 weeks: 100% of weekly payment i.e. the greater of normal weekly earnings (NWE) , or ordinary-time rate-of-pay for work engaged in immediately prior to incapacity.</p> <p>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.</p> <p>> 13 weeks: 85% of weekly payment</p> <p>> 78 weeks: 80% of weekly payment entitlement to weekly payments ceases on the expiration of 9 years after the date of the incapacity: – s69B Minimum weekly payment \$424.60 pw or pro rata equivalent – s.69B(3)</p>	<p>Settlement of claim by agreement where injury is stable and stationary and 12 months has elapsed since lodgement of claim: – s39</p>
Northern Territory	<p>< 26 weeks: Normal weekly earnings (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>> 26 weeks: Whichever is the greater of: a) 75% of NWE to a maximum of \$1667.70; or b) \$555.90 plus \$138.97 for a dependant spouse and \$69.48 for each dependent child; or 90% of NWE (whichever is the lesser): – s65(1)</p> <p>< 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>> 104 weeks: Weekly benefits may reduce or cease, if the</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>

Jurisdiction	Calculation	Settlement, Redemption, Commutation
	worker has been deemed to have an earning capacity, without having regard to the availability of suitable employment: – s65(2)(b)(ii)	
Australian Capital Territory	<p>Total Incapacity</p> <p>s39(2)(3): – weekly compensation for any period on or after the initial incapacity date, but not for a period of longer than, or for periods (whether or not continuous) totalling more than, 26 weeks; or if the worker was, on the initial incapacity date for the injury, younger than 63 years old - for any period after the worker reaches 65; or if the worker was, on the initial incapacity date for the injury, at least 63 years old - for any period more than 2 years after the initial incapacity date.</p> <p>s39(4)(a): – entitlement is based on the worker's average pre-incapacity weekly earnings.</p> <p>s41: – after 26 weeks of total incapacity, the worker is entitled to receive weekly compensation equal to:</p> <ul style="list-style-type: none"> a) if 100% of the worker's average pre-incapacity weekly earnings is less than the pre-incapacity floor for the worker - 100% of the worker's average pre-incapacity weekly earnings; or b) 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 - the statutory floor*; or c) if 65% of the worker's average pre-incapacity weekly earnings is more than the pre-incapacity floor** for the worker: – whichever is more <p>Partial Incapacity</p> <p>s39: – weekly compensation for any period on or after the initial incapacity date, but not for a period of longer than, or for periods (whether or not continuous) totalling more than, 26 weeks; or if the worker was, on the initial incapacity date for the injury, younger than 63 years old - for any period after the worker reaches 65; or if the worker was, on the initial incapacity date for the injury, at least 63 years old - for any period more than 2 years after the initial incapacity date.</p> <p>s39(4)(b): – entitlement is based on the difference between the worker's average pre-incapacity weekly earnings; and the average weekly amount that the worker is being paid for working or could earn in reasonably available suitable employment.</p> <p>s42: – the worker is entitled to receive weekly compensation equal to the difference between the weekly amount the worker is being paid for working or could earn in reasonably available suitable employment and:</p> <ul style="list-style-type: none"> a) if 100% of the worker's average pre-incapacity weekly earnings is less than the 	<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>

Jurisdiction	Calculation	Settlement, Redemption, Commutation
	<p>statutory floor – 100% of the worker's average pre-incapacity weekly earnings; or</p> <p>b) if the relevant percentage of the worker's average pre-incapacity weekly earnings is less than the statutory floor – the statutory floor; or</p> <p>c) if the relevant percentage of the worker's average pre-incapacity weekly earnings is more than the statutory ceiling*** – the statutory ceiling; or</p> <p>d) in any other case – the relevant percentage of the worker's average pre-incapacity weekly earnings</p> <p>Relevant percentage is:</p> <p>a) if the worker is not working or works 25% of the worker's average pre-incapacity weekly hours or less - 65%; or</p> <p>b) if the worker is working more than 25% of the worker's average pre-incapacity weekly hours but not more than 50% - 75%; or</p> <p>c) if the worker is working more than 50% of the worker's average pre-incapacity weekly hours but not more than 75% - 85%; or</p> <p>d) if the worker is working more than 75% of the worker's average pre-incapacity weekly hours but not more than 85% - 95%; or</p> <p>e) if the worker is working more than 85% of the worker's average pre-incapacity weekly hours – 100%</p> <p>* statutory floor is the federal minimum wage under the Workplace Relations Act 1996 (Cth.)</p> <p>** pre-incapacity floor is the statutory floor that applied immediately before the initial incapacity date for the worker in relation to the injury.</p> <p>***statutory ceiling is 150% of AWE at the time the amount is to be paid.</p>	
Commonwealth	<p>Comcare and Seacare:</p> <p>< 45 weeks: 100% Normal weekly earnings (NWE) which includes overtime if regular and required and penalties, with no maximum cap applied – Comcare s19(2); Seacare s31(2)</p> <p>> 45 weeks: Comcare s19(3); Seacare s31(5)</p> <p>(a) if not working:- 75% of NWE</p> <p>Minimum: \$393.79</p> <p>Additional for prescribed person \$94.03 and for each dependent child \$46.99. 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: – Part II, Div 3</p> <p>a) if working >0% - <=25% of pre injury hours:- 80% of NWE less Able to Earn</p> <p>b) if working >25% - <=50% of pre injury hours:- 85% of NWE less Able to Earn</p> <p>c) if working >50% - <=75% of pre injury hours:- 90% of NWE less Able to Earn</p> <p>d) if working >75% - <100% of pre injury hours:- 95% of NWE less Able to Earn</p> <p>e) if working 100% of pre injury hours:- 100% of NWE less Able to Earn</p> <p>Maximum: \$1774.65 from 21 May 2009 (150% of Average Week Ordinary Time Earnings for</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 SRC Act and s44 of the Seafarers Act. 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 (\$94.03 per week (1 July 2008)) and Comcare is satisfied that the degree of incapacity is unlikely to change. The lump sum payment is calculated by a specified formula.</p>

Jurisdiction	Calculation	Settlement, Redemption, Commutation
	<p>Full-time Adults as published by Australian Bureau of Statistics)</p> <p><i>Retired Employees</i> The weekly 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 (i) the employer-funded part of their weekly superannuation pension (or its deemed weekly equivalent from the employer funded lump sum) and (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. The above mentioned "amount of compensation otherwise payable" takes into account any actual or able to earn amount. Comcare - subsections 20(3), 21(3) and 21A(3).</p> <p>MRCS: 100% normal earnings (NE) for current members - Ch 4 Part III < 45 weeks: 100% NE for former members - \$131 plus ADF allowance -</p> <p>> 45 weeks: : (a) if not working:- 75% of NE - \$131 Minimum: Federal Minimum Wage - \$179</p> <p>Compensation payments for ex-workers are increased by reference to the ADF pay scales:- (a) if working >0% - <=25% of pre injury hours:- 80% of NE less actual earnings (AE) (b) if working >25% - <=50% of pre injury hours:- 85% of NWE less Able to Earn (c) if working >50% - <=75% of pre injury hours:- 90% of NE less actual earnings (AE) (d) if working >75% - <100% of pre injury hours:- 95% of NE less actual earnings (AE) (e) if working 100% of pre injury hours:- 100% of NE less actual earnings (AE) Maximum: No maximum</p>	<p>MRCS: Redemptions of weekly benefits are only available in some circumstances and are calculated per s138.</p>
New Zealand	<p>Employees For weeks 2-5, 80% of short term rate, which is defined as: <i>Permanent employees:</i> earnings in the four weeks prior divided by number of weeks in which they were derived: – Schedule 1, Part 1, 34 <i>Non-permanent employees:</i> all earnings in the four weeks prior divided by number of weeks in which they were derived: – Schedule 1, Part 1, 36</p> <p>Week 5, 80% of the long term rate, which is defined as: <i>Permanent employees:</i> earnings from employment with that employer in the 52 weeks prior divided by weeks in which they were derived: – Schedule 1, Part 1, 34 <i>Non-permanent employees:</i> all earnings in the 52 weeks prior divided by 52 weeks: – Schedule 1, Part 1, 36</p>	<p>Injury prior to 1 April 2002, an independence allowance may be payable if impairment > 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>

Jurisdiction	Calculation	Settlement, Redemption, Commutation
	<p>Self-employed Either:</p> <ul style="list-style-type: none"> a) the greater of previous earnings as an employee in the 52 weeks prior to incapacity divided by the number of weeks worked or the minimum full-time earner rate b) earnings as an employee in the 52 weeks prior to the incapacity and as a self-employed person in the relevant year divided by weeks as an employee plus weeks worked as self-employed c) weeks as an employee divided by 52 plus self-employed earnings divided by 52: – Schedule 1, Part 1, s38 <p>Share-holder-employees Either:</p> <ul style="list-style-type: none"> a) earnings as an employee in the 52 weeks prior to incapacity divided by the number of weeks worked 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 c) weeks as an employee divided by 52 plus shareholder-employee earnings divided by 52: – Schedule 1, Part 1, s39 <p>Maximum is NZ\$85 178.08. Will be reduced by a proportion of any earnings derived in the period of incapacity. Minimum for full-time earners: 80% of NZ\$480 (The IPRC Amendment Act 2008 removed the need for a different minimum earner rate for full-time earners under 18)</p>	

** Significant legislative amendments were made to the South Australian Scheme with effect from 1 July 2008. Please refer to section 1.7 'Recent Developments'

6.2 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 6.2 - Incapacity benefits settlements as at 30 June 2009

Jurisdiction	Coverage
New South Wales	Yes - some restrictions
Victoria	Yes – some restrictions
Queensland	Yes
Western Australia	Yes

Jurisdiction	Coverage
South Australia	Yes*
Tasmania	Yes – some restrictions
Northern Territory	Yes
Australian Capital Territory	Yes
Commonwealth (including MRCS)	Yes – some restrictions
New Zealand	Yes

* From 1 July 2009, legislative and policy restrictions apply to redemptions on claims injured on or after 1 July 2006. These restrictions will apply to all claims from the 1 July 2010. The restrictions include: the income maintenance to be redeemed does not exceed \$30 per week (indexed), or the worker is 55 years or over and has no current work capacity, or the Workers Compensation Tribunal orders the redemption in exceptional circumstances

6.3 Medical and hospital costs

Payment of medical and hospital costs assist workers in their recovery from injury by providing necessary rehabilitation and medical services. Providing early medical assistance helps the worker return to work in a safe, timely and durable manner. Most workplace injuries will require some form of medical assistance and there are instances where the worker requires hospital attention due to the severity of the injury. Workers' compensation schemes cover medical, hospital and allied health expenses.

Table 6.3 shows how the *medical and hospital benefits* are calculated and any limits that may apply.

Table 6.3 - Medical and hospital benefits as at 30 June 2009

Jurisdiction	Calculation	Limits
New South Wales	All reasonable costs: – s60(1) (1987 Act)	<p>\$7500 for reasonably necessary medical costs under provisional liability. The insurer can pre-approve amounts in excess of \$7500 in exceptional circumstances.</p> <p>Statutory maximum for medical and hospital expenses is \$50 000. Insurers can apply to WorkCover to approve amounts over \$50 000.</p>
Victoria	All reasonable costs – s99	<p>Entitlement to medical and like services ceases 52 weeks after the entitlement to weekly payments ceases or, if compensation is payable only for medical and like services, 52 weeks after this entitlement commences. In certain circumstances, entitlement does not cease (e.g. if worker's health or ability to undertake activities of daily living or remain at work or surgery is required). Entitlement does not cease if common law economic loss</p>

Jurisdiction	Calculation	Limits
		<p>damages received or voluntary settlement of weekly payments received.</p> <p>If injury is a severe injury or results in death, counselling services will be provided to family members, not exceeding \$5,160: – s99(1)(aa)</p>
Queensland	<p>Medical treatment or hospitalisation that they consider reasonable, having regard to the injury. The Authority may impose conditions. Insurer must pay the cost of the medical treatment: – s210</p>	
Western Australia	<p>Reasonable expenses incurred: – Schedule 1, clause 17</p>	<p>30% of prescribed amount (\$50 550). An additional \$50 000 can be granted by the Dispute Resolution Directorate where the worker's social and financial circumstances justify it: – Schedule 1, clause 18A(1)</p> <p>If a worker meets an exceptional medical circumstances test and has a whole person impairment 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: – Schedule 1, clause 18A</p>
South Australia	<p>A worker is entitled to be compensated for reasonable costs, reasonably incurred in consequence of having suffered a compensable disability, (or the regulated amount where applicable) of:</p> <ul style="list-style-type: none"> a) medical services b) hospitalisation and all associated medical, surgical and nursing services c) approved rehabilitation d) cost of travelling or transportation for the purpose of receiving medical services, hospitalisation or approved rehabilitation e) accommodation if necessary for medical or rehabilitation purposes f) attendance by nurse, etc in certain circumstances g) provision, maintenance, replacement or repair of therapeutic appliances h) medicines and other material purchased on the prescription or recommendation of a medical report; and i) other costs or classes of costs authorised by WorkCover: – s32(1) and (2) 	
Tasmania	<p>Reasonable expenses necessarily incurred by the worker as a result of the injury for medical services, hospital services, nursing services, constant attendant services, rehabilitation services and ambulance services: – s75(1)(a)</p>	<p>Entitlements cease ten years after the date of the claim was lodged.</p>

Jurisdiction	Calculation	Limits
Northern Territory	All reasonable costs	No limit: – s73
Australian Capital Territory	<p>Employer is liable to pay for the cost of medical treatment reasonably obtained in relation to the injury, and for the cost of rehabilitation services: – s70</p> <p>Employer is liable to pay for hospital treatment:– s73</p>	<p>The total amount payable must not be more than the maximum amount for each of the following: medical treatment consisting of the repair or replacement of a worker's contact lenses, crutches, prosthesis, spectacles or other artificial aid and damage or loss of clothing.</p> <p>The maximum amount means an amount agreed between employer and worker or \$617.63, CPI indexed: – s70</p>
Commonwealth	<p>Comcare and Seacare: All reasonable costs</p> <p>MRCS:</p> <ol style="list-style-type: none"> 1. All reasonable costs 2. Schedule items (if condition is chronic and member has discharged from the services) 	<p>Comcare: No limit – appropriate costs: – s16</p> <p>Seacare: No limit: – s28</p> <p>MRCS:</p> <ol style="list-style-type: none"> 1. No limit: – s276 2. Per statutory schedule.
New Zealand	All reasonable costs associated with treatment, and social and vocational rehabilitation: – s69(1)(a)	Prior approval of expenditure is required except for acute treatment, and all costs approved by contract or regulations: – Schedule 1, Part 1, s1

6.4 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 6.4 illustrates what permanent impairment payments may be awarded, how they are assessed and other factors that may apply.

Table 6.4 – Indexed benefits for permanent impairment, as at 30 June 2009

Jurisdiction	Benefit Type	Max Amount (current)	Indexation mechanism	Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Weekly benefits still payable?
New South Wales	Permanent Impairment (s66) Thresholds - <ul style="list-style-type: none"> Physical injury 1% WPI Hearing loss 6% binaural Primary psychological injury 15% WPI 	\$231 000	No	Thresholds for claims for - <ul style="list-style-type: none"> Work Injury Damages 15% WPI Commutation 15% WPI Other criteria apply for the above claims.	Weekly benefits and medical costs are still payable
	Pain and Suffering (s67) Thresholds - <ul style="list-style-type: none"> Physical injury 10% WPI Primary psychological injury 15% WPI 	\$50 000			
Victoria	Combined ¹	\$396 690	CPI (Melbourne). Adjusted 1 July	See section on common law	Weekly benefits and medical costs are still payable
Queensland	Standard	\$244 710	QOTE: Queensland full-time adult's ordinary time earnings. Adjusted 1 July	If 30% or more Work Related Impairment – up to \$244 710 additional lump sum compensation, payable according to a graduated scale prescribed by regulation. If a worker sustains an injury that results in a WPI 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 \$277 205, payable according to a graduated scale prescribed by regulation, but only if:	All other payments cease
	Additional	\$244 710			
	Gratuitous care	\$277 205			
	Latent onset	\$513 895			

Jurisdiction	Benefit Type	Max Amount (current)	Indexation mechanism	Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Weekly benefits still payable?
				<p>(a) 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</p> <p>(b) the worker resides at home on a permanent basis; and</p> <p>(c) the level of care required was not provided to the worker before the worker sustained the impairment; and</p> <p>(d) the worker physically demonstrates the level of dependency.</p> <p>No threshold for common law.</p>	
Western Australia	Lump sum for single or multiple impairments	\$168 499	Labour Price Index ordinary time hourly rates of pay for Western Australia. Adjusted 1 July	<p>1. Common law: not less than 15% whole of person impairment (limited damages) and not less than 25% whole of person impairment (unlimited damages).</p> <p>2. Specialised retraining programs – Not less than 10% whole of person impairment but less than 15% whole of person impairment (also need to satisfy criteria determined by WorkCover WA).</p> <p>3. Payment of additional expenses (Schedule 1, Clause 18A of up to \$250 000) – Not less than 15% whole of person impairment (Arbitrator is also to have regard to the social and financial circumstances and the reasonable financial needs of the injured worker).</p>	Weekly payments cease once a memorandum of agreement is registered pursuant to section 76 of the Act.
South Australia	Non-economic loss	\$420 558	Adjusted on 1 January in each year, beginning on 1 January 2010, by multiplying the stated amount by a proportion obtained by dividing the	N/A	Weekly benefits and medical costs are still payable.

Jurisdiction	Benefit Type	Max Amount (current)	Indexation mechanism	Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Weekly benefits still payable?
			Consumer Price Index for the September quarter of the immediately preceding year by the Consumer Price Index for the September quarter, 2008 (with the amount so adjusted being rounded up to the nearest dollar).		
Tasmania	Combined	\$223 824	369 x full-time average weekly ordinary earnings for Tasmania. Adjusted on 1 January.	30% 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.
Northern Territory	Combined	\$231 254.40	208 x full-time adult persons weekly ordinary time earnings for Northern Territory. Adjusted on 1 January.	N/A	Payment of permanent impairment does not impact on any other entitlements.
Australian Capital Territory	Single or multiple impairments	Approx. \$123 525 June 09) Approx. \$185 288 (Dec 08)	CPI (Canberra). Adjusted quarterly in line with CPI indexed variations.		Negotiated between injured worker and employer/insurer. Schedule 1 of the Act provides as 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

Jurisdiction	Benefit Type	Max Amount (current)	Indexation mechanism	Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Weekly benefits still payable?
Commonwealth	<p>Comcare:</p> <p>Economic</p> <p>Non Economic</p> <p>Seacare:</p> <p>Identical to Comcare</p> <p>MRCS:</p> <p>Combined</p>	<p>Comcare:</p> <p>\$150 396</p> <p>\$56 399</p> <p>Seacare:</p> <p>Identical to Comcare</p> <p>MRCS:</p> <p>\$275.86 per week or equivalent age based lump sum of \$361 486.94.</p>	<p>Comcare:</p> <p>CPI. Adjusted 1 July.</p> <p>Seacare:</p> <p>Identical to Comcare</p> <p>MRCS:</p> <p>CPI. Adjusted 1 July</p>	<p>Comcare:</p> <p>Payment of Permanent Impairment does not impact on any other entitlements under the SRC/Seafarers Act.</p> <p>Seacare:</p> <p>Identical to Comcare</p> <p>MRCS:</p> <p>Payment of Permanent Impairment can impact on the Payment of Special Rate Disability Pension under the MRCA.</p>	
				<p>Comcare:</p> <p>N/A</p> <p>Seacare:</p> <p>Identical to Comcare</p> <p>MRCS:</p> <p>Certain death benefits for dependants if deceased suffered impairment of 80 or more impairment points (IPs).</p> <p>\$71 017.68 plus education scheme benefits equivalent to Youth Allowance paid for each dependent eligible young person, if the impaired person suffers impairment of 80 or more IPs.</p> <p>MRCA Supplement of maximum \$6 per week paid if the impaired person suffers impairment of 80 or more IPs.</p> <p>Free medical treatment for all conditions (compensable or otherwise) if the impaired person suffers impairment of 60 or more IPs due to compensable conditions.</p> <p>Maximum of \$1420.35 for financial advice compensation if the impaired person suffers impairment of 50 or more IPs</p>	
New Zealand	Non Economic	Max \$117 184.28	Adjusted 1 July	N/A	Injury prior to 1 April 2002, an independence allowance may be payable if impairment > 10% WPI

Jurisdiction	Benefit Type	Max Amount (current)	Indexation mechanism	Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Weekly benefits still payable?
					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

The AMA Guidelines apply a holistic criterion when determining the extent of injury to a person. The Guides contain tables that assess both the physical and immaterial (i.e. impingement to lifestyle) losses from injury. Under the NSW and Comcare schemes the rate of compensation awarded for each degree of impairment falling under the physical loss tables is higher than for the non-physical tables. However, most other schemes have one *combined* statutory maximum, with equal weight being given to both categories of loss.

6.5 Death benefits

In the event that a workplace injury results in death, all jurisdictions provide access to *death benefits*. A spouse or dependent of a worker who died in a work related incident may be entitled to certain benefits, which can assist the family with *funeral costs* and ongoing living expenses. The amount and type of damages accessible vary between jurisdictions. Table 6.5 outlines death benefits in each jurisdiction.

Table 6.5 - Death Benefits (as at 30 June 2009)

Jurisdiction	Lump sum	Periodic payments	Other benefits
New South Wales	\$433 650: – s25(1)(a) (1987 Act)	\$110.20 a week to each dependent child: – s25(1)(b) (1987 Act)	Funeral expenses \$9000 maximum: – s27 (1987 Act)
Victoria	\$265 590: – s92A	Dependent partner - determined by average pre-injury earnings (PIAWE) subject to statutory maximum: – s92B First 13 weeks: <ul style="list-style-type: none"> • 95% of earnings • \$1250 max 14 weeks: – 3 years: <ul style="list-style-type: none"> • 50% of earnings • \$1250 max \$834 max for partner with more than 5 children A range of payments for dependent children depending on the particular circumstances of the child	Reasonable funeral expenses, not exceeding \$9300: – s99 Counselling for family members, max. total \$5160: – s99

Jurisdiction	Lump sum	Periodic payments	Other benefits
Queensland	\$458 370 \$12 245 for a totally dependent spouse (s200 (2)(aa)) and \$24 480 for each dependent family member other than the spouse, under 16 or a student (s200 (2)(b))	Weekly payment of 8% of QOTE (\$90.60) for the spouse if there is a dependent family member under 6:- s200(2)(ab) and Weekly payment of 10% of QOTE (\$113.25) for each dependent under 16 or a student	Reasonable funeral expenses: – s199, Ch 3 Part 11
Western Australia	\$230 992 (subject to Labour Price Index (LPI)): – Schedule 1	\$44.20 (subject to LPI) per each dependent child up to age 16 or 21 if a student: – Schedule 1	Funeral expenses - \$8149 (subject to CPI): – Schedule 1(17)
South Australia	Dependent partner: – A lump sum equal to the prescribed sum less any amount that the deceased worker received as compensation for <i>non-economic loss</i> under Division 5: – s45A(5) Dependent partner and one dependent child – 90% of the prescribed sum to partner and 10% to the child Dependent partner and one or up to five dependent children – 5% to each child with the balance to the partner Dependent partner and more than five dependent children – 75% to the partner and 25% to children shared equally Dependent orphaned child: – A lump sum of \$420 558 less any amount that the deceased worker received as compensation for <i>non-economic loss</i> under Division 5: – s45A(6). [If there is more than 1 dependent orphaned children, that amount is divided equally between them] Prescribed sum is \$420 558 from 1 January 2009	Dependent spouse or domestic partner – weekly payments equal to 50% (less if partially dependent spouse) of the amount of the notional weekly earnings of the deceased worker: –s44(1)(a) Dependent orphaned child – weekly payments equal to 25% (less if partially dependent child) of the amount of the notional weekly earnings of the deceased worker: – s44(1)(b) Dependent non-orphaned child – weekly payments equal to 12.5% (less if partially dependent child) of the amount of the notional weekly earnings of the deceased worker: – s44(1)(d) Dependent relative: – may be eligible for weekly payments if WorkCover determines they are eligible in their particular circumstances: - s44(1)(e)	Funeral expenses: – maximum as at 1 Jan 2009, \$7470 subject to annual CPI increase: – s45B
Tasmania	\$223 824.33: – s67	Spouse is entitled to weekly payments calculated at the same rate as the deceased	Employer is liable to pay as compensation the reasonable cost of burial or cremation: – s75

Jurisdiction	Lump sum	Periodic payments	Other benefits
		<p>would have received if he/she became totally incapacitated: – s67A</p> <ul style="list-style-type: none"> first 13 weeks: 100% of weekly payments 14-78 weeks: 85% of weekly payments 78 weeks-2 years: 80% of weekly payments <p>A dependent child is entitled to 10% of the <i>basic</i> salary (\$60.66), commencing on the expiration of 13 weeks after the date of death: – s67A</p>	
Northern Territory	<p>Entitled to 260 times the average weekly earnings in:</p> <ul style="list-style-type: none"> prescribed proportions (share with children) –, or <p>such proportions as the Court determines: – s62(1)</p>	<p>Dependants - prescribed proportion of 260 times the average weekly: – s62(1)</p> <p>10% of average weekly earnings for each child under 16 (or 21 if student), for up to 10 children: – s63</p>	<p>Max: – 10% of the annual equivalent of average weekly earning for funeral costs: – s62(1)(a)</p>
Australian Capital Territory	<p>\$185 288 (June 09) CPI indexed (to be divided between the dependants: – s77(2)</p>	<p>\$61.76 per child CPI indexed: – s77(2)</p>	<p>\$4941 CPI indexed for funeral expenses: – s77(2)</p>
Commonwealth	<p>Comcare: \$412 000 – s17(3), (4)</p> <p>Seacare: \$412 000: – s29(3)</p> <p>MRCS: \$507 968 (age-based maximum amount for partner)</p> <p>\$1 18 363 (age-based maximum additional amount for partner where a <i>service death</i> as defined)</p> <p>\$71 018 (maximum amount for each "other dependant") to a maximum of \$224 889 for all "other dependants."</p>	<p>\$113.30 a week to each child under 16 (or 25 if full-time student): – s17(5)</p> <p>\$113.30 a week to each child under 16 (or 25 if full-time student): – s29(5)</p> <p>\$78.12 a week to each child under 16 (or to age 25 if full-time student)</p>	<p>Reasonable funeral expenses, not exceeding \$9575.91: – s18(2)</p> <p>Reasonable funeral expenses, not exceeding \$5207.58. – s30(2)</p> <p>Reasonable funeral expenses, not exceeding \$9576.</p> <p>Medical treatment for partner/child for all conditions.</p> <p>Financial advice \$1420.</p> <p>Telephone, children's education and pharmaceutical allowances.</p> <p>Bereavement payments for a limited time where deceased was in receipt of periodical compensation payments</p>

Jurisdiction	Lump sum	Periodic payments	Other benefits
New Zealand	Spouse: NZ\$5653.66 Each child or other dependent: NZ\$2826.84	Spouse: 60% of the long-term rate of weekly compensation that the earner would have received Each child and other dependent: 20% of the weekly compensation If total entitlement exceeds 100% individual entitlements are reduced on a pro rata basis	Funeral grant: NZ\$5273.30 Child care payments: NZ\$120.22 for a single child, NZ\$72.13 each if there are more than two children, and a total of NZ\$168.31 for 3 or more children

6.6 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 and the worker has to prove the employer's negligence before any common law action can succeed.

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 because they feel that the benefits under workers' compensation are inadequate. However, if an injured worker elects to pursue common law, they may have to reimburse their employer or WorkCover Authority for any statutory benefits paid out. Table 6.6 outlines the access to common law in each jurisdiction.

Table 6.6 – Common law provisions as at 30 June 2009

Jurisdiction	Access to Common Law against employer?	Types of damages	Statutory threshold(s)	Is election of common law irrevocable?	Cap on damages?
New South Wales	Yes (limited) (known as Work Injury Damages "WID")	<ul style="list-style-type: none"> Damages are paid as one lump sum to cover past and future economic loss of earnings only The amount of weekly benefits already paid must be repaid out of the money awarded Damages can be reduced if the worker's own negligence contributed to the injury: – Part 5, Division 3 (1987 Act) 	<p>To be eligible to make a claim for work injury damages, three criteria must be met:</p> <ol style="list-style-type: none"> the work injury is a result of the negligence of the employer the worker must have at least a 15% whole person impairment claims for lump sum compensation for permanent impairment and pain and suffering 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. <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: – Part 5, Division 3 (1987 Act)</p>	No. If a common law claim is not successful, the worker will continue to receive workers' compensation under the statutory scheme.	No
Victoria	Yes (limited) Access to common law is for workers injured on or after 20 October 1999.	<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</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"> During the impairment assessment process, be assessed as having a whole person impairment of 30% or more (can combine physical and mental impairments); or The Authority or the County Court determines that the worker has a 'serious injury' pursuant to the narrative test. (Accident Compensation Act 1985:– s134AB(37)) 	No. If a common law claim is not successful, the worker may continue to be entitled to statutory benefits.	<p>Damages for pain and suffering must not be awarded if the amount is less than \$49 460: – s134AB(22)</p> <p>Maximum amount for pain and suffering damages is \$484 830:– s134AB(22)</p> <p>Damages for economic loss must not be awarded if the</p>

Jurisdiction	Access to Common Law against employer?	Types of damages	Statutory threshold(s)	Is election of common law irrevocable?	Cap on damages?
		<p>sum impairment benefit paid: – s134AB(36)</p> <p>If economic loss damages are awarded the amount is reduced by any past weekly payments made to the worker: – s134AB(36)</p> <p>No interest is payable on damages: – s134AB(34)</p> <p>The payment of damages does not affect any entitlement to medical and like expenses: – s99(13)</p>	<p>A worker has the option of having their whole person impairment 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 the Authority 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 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(37) and s134AB(38)</p>		<p>amount is less than \$49 460: – s134AB(22)</p> <p>Maximum amount for economic loss damages is \$1 113 590:– s134AB(22)</p>
Queensland	Yes	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	No
Western Australia	Yes (limited)		As of 14 November 2005 access to common law is based on the worker's degree of whole person impairment. The		Where a worker has a WPI of less than 25% the maximum

Jurisdiction	Access to Common Law against employer?	Types of damages	Statutory threshold(s)	Is election of common law irrevocable?	Cap on damages?
			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 & s93E		amount of damages that may be awarded is \$353 850 (indexed annually):– s93K Unlimited common law is available to a worker with a WPI of greater than 25%.
South Australia	No	N/A	N/A	N/A	N/A
Tasmania	Yes (limited)	Damages available for both economic and non-economic loss	A worker must suffer at least 30% WPI before he or she can elect to commence proceedings for an award of damages.	No. Election is required to commence proceedings in Court. Can't make election unless Tribunal accepts that worker permanent impairment of at least 30%. All statutory benefits continue following election.	Unlimited damages is available to a worker with a WPI of at least 30%
Northern Territory	No	N/A	N/A	N/A	N/A
Australian Capital Territory	Yes	Unlimited	Nil	No. Benefits cease on settlement or outcome in favour of the worker. Benefits received prior to settlement are to be repaid from the damages settlement.	Unlimited, outside of workers' compensation scheme.

Jurisdiction	Access to Common Law against employer?	Types of damages	Statutory threshold(s)	Is election of common law irrevocable?	Cap on damages?
Commonwealth	Comcare: Yes (limited)	Comcare: Employee is restricted to damages for non-economic loss A dependant of an employee who has died as a result of injury can take economic and non-economic damages action.	Comcare: 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: - s45 SRC Act,	Comcare: Yes. Employees are able to make an <u>irrevocable</u> election to institute an action or proceedings for damages for non-economic loss under section 45 of the Act. No statutory permanent impairment (s24) or non-economic loss (s27) 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.	Comcare: Damages shall not exceed \$110 000. This amount is not indexed.
	Seacare Yes (limited)	Seacare Damages for non-economic loss	Seacare 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: - s55 Seafarers Act	Seacare: Yes. Employees are able to make an <u>irrevocable</u> election to institute an action or proceedings for damages for non-economic loss under section 55 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.	Seacare: Damages shall not exceed \$138 570.52. This amount is not indexed.
	MRCS: Yes (limited)	MRCS: Damages for non-economic loss	MRCS: To have access to common law the employee must have a successful permanent impairment claim i.e. a benefit payable under the relevant	MRCS: Yes. Able to make an irrevocable election to institute an action or proceedings	MRCS: Damages shall not exceed \$110 000. This amount is not indexed.

Jurisdiction	Access to Common Law against employer?	Types of damages	Statutory threshold(s)	Is election of common law irrevocable?	Cap on damages?
			Commonwealth Act:-s389 MRC Act	for damages for non-economic loss under section 389 of the MRCA. No statutory permanent impairment benefits are payable after the date of such an election.	
New Zealand	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

6.7 Other benefits

There are instances where services are provided that are outside the scope of medical and incapacity benefits. These types of payments are referred to as 'other' benefits and are provided by some schemes in Australia and New Zealand. For example, an injured worker may be entitled to reimbursement for other expenses, such as *attendant care* or *home help*. Where reimbursement is provided, it is generally provided for expenses which are reasonably necessary.

Table 6.7 shows which jurisdictions provide these benefits, how they are calculated and any limits that may apply to the provision of these benefits.

Table 6.7 - Attendant Care as at 30 June 2009

Jurisdiction	Reimbursement	Calculation	Limits
New South Wales	Yes included in the definition of medical or related treatment: – s59 (1987 Act)	-	The statutory maximum amount for medical or related treatment is \$50 000. Insurers can apply to WorkCover to approve amounts over \$50 000 :- s61(3) (1987 Act)
Victoria	Yes: – s5(1), s99. When making an assessment of the attendant care program, the agent must take into	Costs must be 'reasonable'.	-

Jurisdiction	Reimbursement	Calculation	Limits
	<p>account the worker's:</p> <ul style="list-style-type: none"> • abilities • degree of self reliance • accommodation needs • extent of family support, and • family's need for respite. 		
Queensland	<p>Expenses may be paid as a rehabilitation expense if the care is reasonable and necessary.</p> <p>A caring allowance may be paid if the insurer is satisfied that-</p> <ul style="list-style-type: none"> • 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 by another person in relation to whom compensation is not payable: – s224(2) 	<p>The insurer may pay the caring allowance –</p> <ul style="list-style-type: none"> • in the way prescribed under a regulation; and • to, or on account of, the person providing the care. 	-
Western Australia	<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>	-	-
South Australia	<p>WorkCover may as part of a rehabilitation program provide equipment, facilities and services to assist workers cope with their disabilities at home or in the workplace: – s26(3)(g)</p> <p>WorkCover may pay the cost of attendance by a registered or enrolled nurse, or by some other person approved by WorkCover or of a class approved by WorkCover, where the disability is such that the worker must have nursing or personal attendance as is reasonable or prescribed rate: – 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</p>	-	-

Jurisdiction	Reimbursement	Calculation	Limits
	<p>Reasonableness should be considered in the context of:</p> <ul style="list-style-type: none"> • the nature of the service • the necessity of the service • the relationship to the injury • the number and frequency of services • the benefit to the worker, and • the cost of the service. 		
Tasmania	<p>Where as a result of an injury suffered by a worker the question arises as to whether or not any constant attendance services are required by the worker, the matter may be referred to the Tribunal by the worker, employer or the insurer for determination as to:</p> <ol style="list-style-type: none"> the necessity for such services the period for which such services are to be provided; and the level of payments which it considers to be reasonable and appropriate for such services: – s75(3) 	-	-
Northern Territory	<p>Employer shall pay the costs incurred for such home modifications, vehicle modifications and household and attendant care services as are reasonable and necessary for a worker who suffers or is likely to suffer a permanent or long term incapacity: – s78(1)</p> <p>The following matters are taken into account when considering reasonable and necessary attendant care services:</p> <ul style="list-style-type: none"> • the nature and extent of the worker's injury and the degree to which that injury impairs their ability to provide for their personal care • the extent to which such medical services and nursing care as may be received by him or her provide for their essential and regular personal care • where he or she so desires, the extent to which it is reasonable to meet his or her desire to live outside an institutional environment • the extent to which attendant care services are necessary to enable injured person to undertake or 	-	-

Jurisdiction	Reimbursement	Calculation	Limits
	<p>continue employment</p> <ul style="list-style-type: none"> any assessment made, at the request of the insurer, by persons having expertise in the worker's rehabilitation any standard developed or applied by a government department or public authority in respect of the need of disabled persons for attendant care services; and the extent to which a relative of the worker might reasonably be expected to provide attendant care services: – s78(2)(d) <p>Attendant care services means services (other than medical and surgical services or nursing care) which are required to provide for the person's essential and regular personal care: – s78(4)</p>		
Australian Capital Territory	Not prescribed under ACT legislation.		
Commonwealth	<p>Comcare: liable to pay compensation for attendant care services reasonably required .</p>	<p>In the amount of:</p> <p>a) \$375.98 per week s29(3); or</p> <p>b) an amount per week equal to the amount per week paid or payable by the worker for those services, whichever is less</p>	<p>The following matters need to be considered:</p> <ul style="list-style-type: none"> the nature of the worker's injury and the degree to which that injury impairs worker's ability to provide for their own personal care the extent to which any medical service or nursing care received by the worker provides for their essential and regular personal care the extent to which it is reasonable to meet any wish by the worker to live outside an institution the extent to which attendant care services are necessary to enable the worker to undertake or continue employment any assessment made in relation to the rehabilitation of the worker; and the extent to which a relative of the worker might reasonably be expected to provide attendant care services: – s29(4)
	<p>Seacare: liable to pay compensation for attendant care services reasonably required .</p>	<p>In the amount of:</p> <p>a) \$375.98 per week s43(4); or</p> <p>b) an amount per week equal to the amount</p>	<p>The following matters need to be considered:</p> <ul style="list-style-type: none"> the nature of injury and the degree to which that injury impairs the worker's ability to provide for their personal care the extent to which any medical service or nursing

Jurisdiction	Reimbursement	Calculation	Limits
	<p>MRCS: Liable to pay compensation for attendant care services reasonably required</p>	<p>per week paid or payable by the worker for the services, whichever is less – s43(4)</p> <p>in the amount of:</p> <p>a) \$390.60 per week; or</p> <p>b) an amount per week equal to the amount per week paid or payable by the person for those services, whichever is less: – s.219</p>	<p>service received by the worker provides for their essential and regular personal care</p> <ul style="list-style-type: none"> the extent to which it is reasonable to meet any wish by the worker to live outside an institution the extent to which attendant care services are necessary to enable the worker to undertake or continue employment; and the extent to which a relative of the worker might reasonably be expected to provide attendant care services: – s43(5) <p>MRCS: The following matters need to be considered (s.218):</p> <p>(a) the nature of the person's injury or disease;</p> <p>(b) the degree to which that injury or disease impairs the person's ability to provide for his or her personal care;</p> <p>(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;</p> <p>(d) the extent to which the attendant care services are necessary to meet any reasonable wish by the person to live outside an institution;</p> <p>(e) the extent to which attendant care services are necessary to enable the person to undertake 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;</p> <p>(h) any other matter that the MRCC considers relevant.</p>
New Zealand	<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>	-	-

Jurisdiction	Reimbursement	Calculation	Limits
	<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)</p>		

Table 6.8 – Home help as at 30 June 2009

Jurisdiction	Reimbursement	Calculation	Limits
New South Wales	<p>Compensation is payable for domestic assistance that is reasonably necessary for an injured worker. An injured worker is eligible to receive domestic assistance if:</p> <ul style="list-style-type: none"> • a medical practitioner has certified, on the basis of a functional assessment, that it is reasonably necessary that assistance be provided and the assistance provided is a direct result of the injury • the assistance would not be provided for the worker but for the injury • degree of permanent impairment to the worker is at least 15% WPI or the assistance provided is to be provided on a temporary basis • the assistance provided is in accordance with a care plan established by the insurer in accordance with WorkCover guidelines: – s60AA (1987 Act). 	<p>Domestic assistance is included in the definition of medical or related treatment: – s59 (1987 Act)</p>	<p>The statutory maximum amount for medical or related treatment is \$50 000. Insurers can apply to WorkCover to approve amounts over \$50 000.</p>
Victoria	<p>Yes: – s5(1), s99. The agent must assess the worker's individual circumstances to determine whether the:</p> <ul style="list-style-type: none"> • cost of the service is reasonable; and • service is necessary given the worker's circumstances. <p>Agents should consider the following when assessing whether a service is necessary:</p>	<p>The Act defines 'reasonable costs' as an amount:</p> <ul style="list-style-type: none"> • determined by VWA, employer, or self insurer as reasonable in relation to a particular service 	-

Jurisdiction	Reimbursement	Calculation	Limits
	<ul style="list-style-type: none"> the relationship of the injury to the requested services whether the service is for the worker whether the worker undertook the tasks pre-injury the worker's ability to undertake the tasks post injury the size of the worker's home/garden at the time of the injury the worker's family circumstances; and the contribution of family/household members. 	<ul style="list-style-type: none"> that does not exceed an amount (if any), or method to calculate an amount, published in the Government Gazette as a maximum amount payable for a particular service (such as an amount must not be less than the amount or fee specified under the <i>Health Insurance Act 1973</i> applicable to a service of that kind) that is determined by the VWA, employer or self-insurer as a reasonable cost having regard to: <ul style="list-style-type: none"> the service or provision actually rendered the necessity of the service or provision in the circumstances; and any guidelines issued by the VWA. 	
Queensland	Additional lump sum compensation for gratuitous care up to \$277 205 – s193	<p>The insurer must decide the amount of the worker's entitlement to additional compensation of up to \$277 205, payable according to a graduated scale prescribed under a regulation, having regard to –</p> <ol style="list-style-type: none"> the worker's WRI the worker's level of dependency; and any other information prescribed under a regulation 	<p>The worker, if the worker has 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, is entitled to additional lump sum compensation only if –</p> <ol style="list-style-type: none"> 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 the worker resides at home on a permanent basis the level of care required was not provided to the worker before the worker sustained the impairment; and the worker physically demonstrates the level of dependency mentioned in subsection (1)(b)

Jurisdiction	Reimbursement	Calculation	Limits
			<p>The insurer must ask that a registered occupational therapist assess the worker's level of dependency resulting from the impairment in the way prescribed under a regulation.</p> <p>In addition, limits on damages for gratuitous care/home help: – Chapter 5, Part 10</p>
Western Australia	Not prescribed in the legislation. In special circumstances insurers may on a without prejudice basis approve limited homecare.		
South Australia	<p>WorkCover may as part of a rehabilitation program provide equipment, facilities and services to assist workers cope with their disabilities at home or in the workplace: – s26(3)(g)</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>Where costs exceed \$500.00 a written request will be required from the worker for approval of further costs, including written confirmation from the worker's treating practitioner that ongoing home maintenance services are necessary.</p>	<p>Reasonable costs, reasonably incurred – s31(1)</p> <p>Reasonable costs are determined having regard to:</p> <ul style="list-style-type: none"> • nature of the service • necessity of the service • relationship to the injury • number and frequency of services • benefit to the worker • cost of the service
Tasmania	<p>May be considered as part of a rehabilitation program if it facilitates or assists the workers rehabilitation:</p> <p>“rehabilitation services” means –</p> <ol style="list-style-type: none"> treatment, training, or other assistance provided to facilitate or assist a worker's rehabilitation the supply of material or equipment in respect of any occupational therapy projects undertaken by a worker; or any necessary and reasonable modifications required to be made to a worker's workplace, place of residence, or motor vehicle: – s74 	-	-
Northern Territory	Employer shall pay the costs incurred for such home modifications, vehicle modifications and household and attendant care services as are reasonable and necessary	-	-

Jurisdiction	Reimbursement	Calculation	Limits
	<p>for a worker who suffers or is likely to suffer a permanent or long term incapacity: – s78(1)</p> <p>The following matters are taken into account when considering reasonable and necessary household services:</p> <ul style="list-style-type: none"> • extent to which household services were provided by the worker before the injury and the extent to which he or she is able to provide those services after the injury • number of household family members, their ages and their need for household services • the extent to which household services were provided by other household family members before the injury • extent to which other household family members or other family members might reasonably be expected to provide household services for themselves and for the worker after the injury; and • need to avoid substantial disruption to the employment or other activities of the household family members: – s78(2)(c) 		
Australian Capital Territory	Not prescribed under ACT legislation.		
Commonwealth	<p>Comcare: Liable to pay compensation for household services reasonably required: – s29(1)</p>	<p>50% of the amount per week paid or payable by the worker for those services not more than \$375.98: – s29(1)</p>	<p>The following matters need to be considered:</p> <ul style="list-style-type: none"> • extent household services provided by the worker before the date of injury and the extent to which he or she is able to provide those services after that date • number of persons living with the worker as household members, ages and need for services • extent to which household services were provided to worker before the injury • the extent to which members of the household might reasonably be expected to provide household services for themselves and the injured worker; and • the need to avoid substantial disruption to the employment or other activities of persons in the household: – s29(2)
	<p>Seacare: Compensation is payable if worker reasonably requires household services: – s43(1)</p>	<p>Amount of compensation payable must not be more than \$375.98; and must</p>	<p>The following matters need to be considered:</p> <ul style="list-style-type: none"> • extent household services provided by the worker before the date of injury and the extent to which he or she is able to

Jurisdiction	Reimbursement	Calculation	Limits
	<p>MRCS: Liable to pay compensation for household services reasonably required</p>	<p>not be less than 50% of the amount paid per week by the worker, unless the amount payable is more than \$706.74: – s43(2)(a) & s43(2)(b)</p> <p>in the amount of:</p> <p>a) \$390.60 per week; or</p> <p>b) an amount per week equal to the amount per week paid or payable by the person for those services, whichever is less: – s.216</p>	<p>provide those services after that date</p> <ul style="list-style-type: none"> number of persons living with the worker as household members, ages and need for services extent to which household services were provided to worker before the injury the extent to which members of the household might reasonably be expected to provide household services for themselves and the injured worker; and the need to avoid substantial disruption to the employment or other activities of persons in the household: – s43(3) <p>MRCS: The following matters need to be considered (s.215):</p> <p>(a) the extent to which household services were provided by the person before the service injury or disease;</p> <p>(b) the extent to which he or she is able to provide those services after the service injury or disease;</p> <p>(c) the number of other persons (<i>household members</i>) living with that person as members of his or her household;</p> <p>(d) the age of the household members and their need for household services;</p> <p>(e) the extent to which household services were provided by household members before the service injury or disease;</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;</p> <p>(h) any other matter that the MRCC considers relevant.</p>
New Zealand	<p>Schedule 1, Part 1 17 Home help</p> <p>(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</p>	<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</p>	<p>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> <p>(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</p> <p>(b) who provided home help before the claimant</p>

Jurisdiction	Reimbursement	Calculation	Limits
	<p>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>	outcome.	suffered his or her personal injury.

Injured workers can obtain other assistance in the form of home or vehicle modifications. Table 6.9 highlights the other assistance available in the jurisdictions.

Table 6.9 – Other assistance as at 30 June 2009

Jurisdiction	Reimbursement	Calculation	Limits
New South Wales	<p>s59 (1987 Act) "medical or related treatment" includes:</p> <p>(g) the modification of a worker's home or vehicle directed by a medical practitioner having regard to the nature of the worker's incapacity, and</p> <p>(h) treatment or other thing prescribed by the regulations as medical or related treatment.</p>	Not applicable	Section 61 of the Workers Compensation Act 1987 limits the maximum cumulative amount for which an employer is liable for medical and related treatment for the same injury to \$50 000. If an additional amount for reasonably necessary services is required, WorkCover may give a direction to increase the amount payable.
Victoria	Agents can pay the reasonable costs of home or car modifications reasonably required as a result of a work related injury or may make a contribution towards a new car or a semi-detachable portable home unit if the worker's home or car cannot be modified.	-	No limit however if the cost of the modifications or the contribution is over \$10 000, then the worker is required to enter into a Capital Service Agreement

Jurisdiction	Reimbursement	Calculation	Limits
Queensland	-	-	-
Western Australia	<p>Not prescribed in the legislation. In special circumstances insurers may, on a without prejudice basis, 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 \$11 795 as at 30 June 2009).</p> <p>Workers injured post 14 November 2005 with a degree of whole of person impairment between not less than 10% and 15% WPI that have exhausted all avenues in an attempt to return to work, without success, may be able to access a specialised retraining program. In order to qualify, injured workers need to meet strict retraining criteria. Specialised retraining programs can offer injured workers an extension of up to 75 per cent of the prescribed amount (up to \$126 347 as at 30 June 2009) to partake in informal training, vocational or tertiary studies.</p>		
South Australia	-	-	-
Tasmania	<p>May be considered as part of a rehabilitation program if it facilitates or assists the workers rehabilitation:</p> <p>“rehabilitation services” means –</p> <ul style="list-style-type: none"> d) treatment, training, or other assistance provided to facilitate or assist a worker’s rehabilitation e) the supply of material or equipment in respect of any occupational therapy projects undertaken by a worker; or <p>any necessary and reasonable modifications required to be made to a worker’s workplace, place of residence, or motor vehicle: – s74</p>	-	-
Northern Territory	Employer shall pay the costs incurred for such home modifications, vehicle modifications and household and attendant care services as are reasonable and necessary for a worker who suffers or is likely to suffer a permanent or long term incapacity: – s78(1)	-	-
Australian Capital Territory	-	-	-

Jurisdiction	Reimbursement	Calculation	Limits
Commonwealth	<p>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:</p> <ul style="list-style-type: none"> costs of alteration of the employee's residence or place of work modifications to a vehicle used by the employee aids and appliances inc. repair or replacement. <p>MRCS:</p> <ol style="list-style-type: none"> Loss of, or damage to, medical aids Telephone allowance Motor Vehicle Compensation Scheme Pharmaceutical Allowance Children's Education Assistance Scheme 	<p>Following rehabilitation and a 'reasonably required' test</p> <p>MRCS:</p> <ol style="list-style-type: none"> Reimbursement of amounts reasonably incurred in replacement or repair. Between \$23.00 and \$34.60 for a single person. - Assistance with purchase of a new or secondhand car. The amount is what Commission considers reasonable. - assistance with cost of insurance in relation to and repairs to modifications \$3.00 per week - Primary students - \$223.70 per year - Secondary students - \$23.00 to \$185.70 per week. 	No limit
New Zealand	<p>Social rehabilitation includes:</p> <ul style="list-style-type: none"> aids and appliances 	All assistance must be provided to meet an	-

Jurisdiction	Reimbursement	Calculation	Limits
	<ul style="list-style-type: none"> child care educational support home modifications training for independence, and transport for independence (including vehicle purchasing and modifications). 	assessed, injury-based need. ACC is only responsible for providing the level of assistance required to achieve the planned rehabilitation outcome.	

6.8 Definition of Dependants/Spouse for Death Benefits

Table 6.10 Treatment of dependants and spouse for death benefits as at 30 June 2009

Jurisdiction	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
New South Wales	s25 (1987 Act) – dependants. If there are no dependants the lump sum death benefit is paid to the worker's estate.	<p>s4 (1998 Act) – "dependants" of a worker means such of the members of the worker's family as were wholly or in part dependent 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 dependent, and includes:</p> <ol style="list-style-type: none"> a person so dependent to whom the worker stands in the place of a parent or a person so dependent who stands in the place of a parent to the worker, and a divorced spouse of the worker so dependent, and a person so dependent who: <ol style="list-style-type: none"> 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 in relation to an injury received after that commencement – is the other part to a de facto relationship with the worker. <p>s25(5)(1987 Act) -</p> <ul style="list-style-type: none"> "child of the worker" means a child or stepchild of the worker and includes a person to whom the worker 	No, however as dependant is not defined they may qualify.	

Jurisdiction	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
		<p>stood in the place of a parent</p> <ul style="list-style-type: none"> "dependent child of the worker" means a child of the worker who was wholly or partly dependent for support on the worker "student" means a person receiving full-time education at a school, college or university 		
Victoria		<p>s5 "dependant" means a person who—</p> <p>(a) at the time of the death of a worker was wholly, mainly or partly dependent 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 dependent on the earnings of the worker;</p> <p>s5 "spouse" of a person means a person to whom that person is married;</p> <p>s5 "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 "domestic partner" of a person means 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>Yes</p> <p>s92A - Revised compensation for death of worker</p> <p>Includes definitions:</p> <p>"partially dependent partner" means a partner who is to any extent dependent on the worker's earnings.</p> <p>"dependent partner" means a partner wholly or mainly dependent on the worker's earnings.</p>	<p>s5 "member of a family" means the 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	Ch 3 part 11 - dependant	s27 Meaning of dependant - A dependant , of a deceased worker, is a member of the deceased worker's family who was completely or partly dependent on the	No however the definition of de facto partner in	s28 Meaning of member of the family - A person is a member of the family of a deceased worker, if

Jurisdiction	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
		<p>worker's earnings at the time of the worker's death or, but for the worker's death, would have been so dependent.</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>s32DA <i>Acts Interpretation Act 1954</i> states that the gender of the persons is not relevant</p>	<p>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	Schedule 1 – spouse or de facto partner	<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>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>	<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</p>	<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 - “dependants” means such members of the worker's family as were wholly or in part dependent upon the earnings of the worker at the time of his death, or would, but for the injury, have been so dependent.</p>

Jurisdiction	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
South Australia			<i>whether the persons are different sexes or the same sex."</i>	
	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 proceeding 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>a child, of whom the worker and the person are the parents, has been born (whether or not the child is still living).</p>	No, however may be classified as being in a de facto relationship	<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 dependent for the ordinary necessities of life on earnings of the worker; or</p> <p>b) would, but for the worker's disability, have been so dependent, and includes a posthumous child of the worker; and dependent has a corresponding meaning;</p>
Tasmania	s67 – dependent spouse or dependent caring partner Dependent child or children may also be entitled in some circumstances.	<p>s3 - "caring partner", in relation to a person, means –</p> <p>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 Relationships Act 2003; or</p> <p>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>	Yes, included in s67	<p>s3 - "dependants" means such members of the family of the worker in relation to whom the term is used as –</p> <p>a) were dependent, wholly or in part, upon the earnings of that worker at the time of his death, or</p> <p>b) would have been so dependent but for the incapacity due to the injury,</p> <p>s3 - "member of the family", in relation to a worker, means –</p>

Jurisdiction	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
		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> ;		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
Northern Territory	s62 - spouse	s49 - " spouse ", in relation to a person, includes a de facto partner of the person;	No, however de facto partner is not defined	s49 - "dependant", in relation to a worker, means – a) a spouse or other member of the worker's family; b) a person to whom the worker stood in loco parentis or who stood in loco parentis to the worker; c) a grandchild of the worker
Australian Capital Territory	s77(2) - dependants	Ex Dictionary - dependant , of a dead worker, means an individual— a) who was totally or partly dependent 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 dependent; and b) who was— (i) a member of the worker's family; or (ii) a person to whom the worker acted in place of a parent or who acted in place of a parent for the worker.	Yes, family members are included in the definition of a dependant and a domestic partner is classed as a member of the family	Dictionary - member of the family , in relation to a worker or an employer, means the grandchild, child, stepchild, adopted child, sister, brother, half-sister, half-brother, <u>domestic partner</u> , parent, step-parent, mother-in-law, father-in-law or grandparent of the worker or employer. <i>Note</i> For the meaning of domestic partner , see the s169 <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. Dictionary - domestic partner , of a worker who has died, means the person who was the worker's domestic partner when the worker died. <i>Note</i> This definition qualifies the meaning of domestic partner given by the s169 <i>Legislation Act 2001</i>

Jurisdiction	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
Commonwealth	Comcare s17 - dependants	<p>s4 - dependant, in relation to a deceased employee, means:</p> <ul style="list-style-type: none"> a) the spouse, parent, step-parent, father-in-law, mother-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; <p>being a person who was wholly or partly dependent on the employee at the date of the employee's death.</p> <p>s4 - spouse includes:</p> <ul style="list-style-type: none"> 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. The Same Sex Relationships (<i>Equal Treatment in Commonwealth Laws-General Law reform</i>) Act 2008 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.</p>	
	Seacare 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:</p> <ul style="list-style-type: none"> (a) the employee's spouse; or (b) a prescribed child of the employee; <p>is taken to be a person who was wholly dependent on the employee at that date.</p> <p>s3 - spouse includes:</p> <ul style="list-style-type: none"> (a) in relation to an employee or a deceased employee—a person of the <u>opposite sex</u> to the employee who lives with, or immediately before the date of the employee's death lived with, the employee as the spouse of the employee on a genuine domestic basis although not legally married to the employee; and (b) in relation to an employee or a deceased employee 	<p>No, excluded by legislation</p>	

Jurisdiction	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
	<p>MRCS ss 233, 251 and 262.</p>	<p>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> <p>s15, dependant means - persons in the following list who are partly or wholly economically dependent on the member (deemed for partners and eligible young persons if living with member, s17):</p> <ul style="list-style-type: none"> • member's partner • member's father, mother, step-father or step-mother • the father, mother, step-father or step-mother of the member's partner • the member's grandfather or grandmother • the member's son, daughter, step-son or step-daughter • the son, daughter, step-son, step-daughter of the member's partner • the member's grandson or grand-daughter • the member's brother, sister, half-brother, or half-sister • a person in respect of whom the member stands in the position of a parent; or • a person who stands in the position of a parent to the member. <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</p> <p>(ba) 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</p>	<p>Yes, see definition of partner – s5</p>	

Jurisdiction	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
		<p>section 22B 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"> (i) is, in the Commission's opinion (see subsection (2)), in a de facto relationship with the member, and (ii) is not an ancestor, descendant, brother, sister, half-brother or half-sister of the member (see subsection (3)). 		
New Zealand	s(69e) 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> <ul style="list-style-type: none"> a) Person A and the claimant are living apart; and b) The claimant is not contributing financially to person A's welfare. <p>s18a – partner means a person (person A) with whom the claimant is in a civil union or a de facto relationship.</p> <p>However, person A is not the partner of a claimant if –</p> <ul style="list-style-type: none"> c) Person A and the claimant are living apart; and d) The claimant is not contributing financially to person A's welfare. <p>s6 - child, in relation to a deceased claimant,—</p> <ul style="list-style-type: none"> (a) means his or her natural child; and (b) includes his or her adopted child; and (c) includes any other child who would ordinarily be regarded as his or her child because the deceased claimant— <ul style="list-style-type: none"> (i) was the spouse [or partner] of 1 of the child's parents, and (ii) acted as a parent of the child; but (c) does not include an other [sic: another] dependant of the claimant <p>other dependant means a person who has all the</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.	

Jurisdiction	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
		<p>following characteristics immediately before a deceased claimant's death:</p> <p>(a) because of his or her physical or mental condition, he or she is financially dependent on the deceased claimant;</p> <p>(b) he or she is deriving average earnings per week of less than the minimum weekly earnings as determined under clause 42(3) of Schedule 1;</p> <p>(c) he or she is not the deceased claimant's spouse [or partner];</p> <p>(d) he or she is not a child of the deceased claimant under 18 years.</p>		

6.9 Suspension and Cessation of benefits

Compensation and rehabilitation of injured workers imposes mutual obligations on insurers, employers and employees. Payments may be suspended or ceased if certain obligations are not met by the injured worker. Table 6.11 lists the provisions in legislation which may result in compensation being ceased or suspended until certain conditions are met.

Table 6.11 – Suspension or cessation of benefits (as at 30 June 2009)

Jurisdiction	Criteria for suspension of compensation payments
New South Wales	<ul style="list-style-type: none"> • 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 subsection (2), (3) or (4) covers the case): <ol style="list-style-type: none"> 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 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 c. the person ceases to be entitled to participate in any injury management program provided for under this Act or the 1998 Act. – s151A (1987 Act) • The insurer may discontinue weekly payments of compensation if the worker fails to provide medical certification of the worker's incapacity or to provide permission for the insurer to obtain information relevant to the injury from medical or rehabilitation service providers - s270 (1998 Act) • 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 section 16 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. – s87F(8)(1987 Act) • 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"> a. the worker's right to recover compensation under this Act with respect to the injury, or b. the worker's right to the weekly payments is suspended until the examination has taken place. - s119 (1998 Act) • 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"> a. is not suitably employed and is not seeking suitable employment or participating in rehabilitation/retraining, or b. is not suitably employed and has previously unreasonably rejected suitable employment, or c. has sought but has failed to obtain suitable employment primarily because of the labour market – s52A (1987 Act) • Worker ceases to reside in Australia unless a doctor certifies, or the Workers Compensation Commission determines, that the incapacity is likely to be permanent –s53 (1987 Act)
Victoria	<p>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). A worker's weekly payments may be ceased if a worker does not make reasonable efforts to return to work: s93A(4), s93B(4), 93CA(4), 93CB(4) & 93CC(5). In particular, workers are required to make every reasonable effort to participate in occupational rehabilitation or a return to work plan, participate in assessments of incapacity, rehabilitation progress and employment prospects; and make every reasonable effort to return to work in suitable employment.</p>

Jurisdiction	Criteria for suspension of compensation payments
Queensland	<p>Insurer may suspend compensation if worker:</p> <ul style="list-style-type: none"> • is serving a term of imprisonment: – s137 • fails to participate in an independent medical examination: – s135 • fails to participate in rehabilitation: – s232 • fails to participate in an examination by the medical assessment tribunal: – s510 <p>If compensation payments are suspended, no compensation is payable for the period of suspension: – s138</p>
Western Australia	<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>Entitlement to weekly payments ceasing on account of age – s56</p> <p>In the event that compensation is suspended, no compensation is payable during the suspension period – s63</p>
South Australia	<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"> • failure to submit to a medical examination where required by notice – s36(1a)(a) • failure to supply a medical certificate where required by notice – s36(1a)(b) • refusal or fails to submit to proper medical treatment - s36(1a)(c) • failure to participate in a rehabilitation program or frustrates the objectives of the program - s36(1a)(d) • failure to comply with obligation under rehabilitation or return to work plan - s36(1a)(e) • failure to undertake work offered and capable of doing or take reasonable steps to find or obtain employment or unreasonably discontinuing the employment - s36(1a)(f) • refuses or fails to participate in assessments of worker's capacity, rehabilitation progress or future employment prospects - s36(1a)(fa) • anything else recognised as a breach of the obligation of mutuality - s36(1a)(g) <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>
Tasmania	<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.(s85)</p> <p>A worker ceases to be entitled to weekly compensation whilst serving a term of imprisonment (s82)</p> <p>An employer may terminate weekly compensation if a worker has failed or refused to participate in a rehabilitation program or suitable duties recommended by his employer.(s86)</p>
Northern Territory	-
Australian Capital Territory	<p>A worker's entitlement to compensation may be suspended under section 113 (compliance by workers), section 44 (living outside Australia) or section 83 (no compensation while imprisoned) of the Workers Compensation Act 1951.</p>

Jurisdiction	Criteria for suspension of compensation payments
Commonwealth	<p>Comcare: An employee's right to compensation is suspended for unreasonable refusal to: undergo or obstructs a rehabilitation assessment (s36); to undertake a rehabilitation program (s37); to undergo or obstructs a medical examination (s57) or to comply with a notice to give information or a copy of a document (s58). 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).</p> <p>Seacare: 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. 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> <p>MRCS:</p> <ul style="list-style-type: none"> • failure to undertake a rehabilitation program where requirement to undertake one compensation (other than treatment) may be suspended for that period - s52 • suspension of incapacity payments for periods of imprisonment for conviction of an offence - s122 • failure to provide certain information may result in refusal to deal with claim - s330
New Zealand	<p>s117(3) ACC may decline to provide entitlement for as long as the client unreasonably refuses or unreasonably fails to –</p> <ol style="list-style-type: none"> (a) comply with any requirement of this Act relating to the claimant's claim; or (b) undergo medical or surgical treatment for his or her personal injury, being treatment that the claimant is entitled to receive, or (c) agree to, or comply with, an individual rehabilitation plan. <p>Compensation is not payable:</p> <ul style="list-style-type: none"> • where the claimant becomes 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 • where the claimant is in prison. – s120 <p>ACC can apply to the courts to have any entitlements denied if the claimant suffered the personal injury in the course of committing an offence and is sentenced to prison: – s122</p>

7. Return to Work

Return to work means helping injured workers get back to work or remain at work whilst recovering from an injury. This may include employers providing suitable employment that the injured worker can do, which in the total circumstance of the worker, will promote his or her *rehabilitation* and return to the workforce. Return to work can also involve medical practitioners and rehabilitation service providers rehabilitating injured workers back into the workplace.

7.1 Pre-injury positions

When a worker sustains an injury, an early and safe return to work is the goal of all jurisdictions. Most jurisdictions require employers to provide suitable duties, which can be the same or an equivalent position an injured worker held before their injury. Table 7.1 outlines the pre-injury position provisions in each jurisdiction.

Table 7.1 - Pre-injury Position Provisions as at 30 June 2009

Jurisdiction	Pre-injury Position Provisions
New South Wales	An employer of an injured worker who dismisses the worker is guilty of an offence if the worker is dismissed because the worker is not fit for employment as a result of the injury, and the worker is dismissed within 6 months after the worker first became unfit for employment. If the employer offers a dismissed injured worker's position to a replacement worker, the employer must advise the replacement worker that the injured worker may be re-instated to that position within two years of the date of injury Industrial Relations Commission may order reinstatement: – Part 8 (1987 Act)
Victoria	Under the legislation, employers are required to provide injured workers with a job the same as or equivalent to the one the injured worker was doing before the injury or illness. Alternatively, if the worker is unable to return to this job but has a current work capacity, the employer is required to provide the worker with suitable employment. This requirement applies for the first 12 months of incapacity for work, unless the employer can show this would cause unjustifiable hardship for the employer: – s155A and s155B
Queensland	The prescribed minimum period an employer is allowed before dismissing a worker solely or mainly because of the injury is 12 months: – s232B
Western Australia	Employer required to keep position open (if reasonably practicable for injured worker) for 12 months, and to take reasonable steps to rehabilitate worker. If that job is no longer available, or worker can no longer perform it, employer must offer a similar position for which worker is qualified, and capable of doing: – s84AA (1) Employers are required to notify the worker and WorkCover WA of any intention to dismiss the worker 28 days before the dismissal is due to take place: – s84AB
South Australia	The employer from whose employment the disability arose must provide suitable employment for the worker: – s58B. This obligation is not time limited although it does have to be reasonably practicable for the employer to provide the suitable employment. Employers with less than 10 employees are a noted exclusion to the operation of this section after a period of a year. Failure to comply with this requirement carries a maximum penalty of \$25 000. In addition, WorkCover can impose supplementary levies of up 110% of the levy paid for the worker for the period of the breach of s58B. An additional provision requires a minimum notification period of proposed termination to both WorkCover and the worker: -s58C. The notice period is dependant upon relevant Federal industrial arrangements and specific exclusions. Failure to comply with this requirement carries a maximum penalty of \$15 000.
Tasmania	Employer to keep position open for injured worker for 12 months, unless it is not practicable to do so, or reason for position no longer exists: – s138A

Jurisdiction	Pre-injury Position Provisions
Northern Territory	No requirement under the Act for employer to keep a position open for injured worker but employer must take all reasonable steps to provide suitable employment and, if unable to do so, he/she must refer the worker to an alternative employer incentive scheme developed by the NT WorkSafe Authority: – s75A(1) and (2)
Australian Capital Territory	Employer has an obligation to keep a position open for 6 months, if requested by the injured worker: – s105
Commonwealth	<p>Where an employee is undertaking or has completed, a rehabilitation program, the employer 'shall take all reasonable steps to provide the employee with suitable employment or to assist the employee to find such employment': – s40. Usually this will be to the person's usual position. Because, for incapacitated employees, weekly benefits will continue to be paid to age 65 or beyond (ss 23(1A)) there is a strong financial incentive to the employer to 'provide the employee with suitable employment or to assist the employee to find such employment'.</p> <p>MRCS</p> <p>The aim of rehabilitation is to maximise the potential to restore a person who has an impairment, or an incapacity for service or work, as a result of a service injury or disease to at least the same physical and psychological state, and at least the same social, vocational and educational status, as he or she had before the injury or disease. - s38</p> <p>MRCA The person's rehabilitation authority must take all reasonable steps to assist the person to find suitable work.- s62</p>
New Zealand	<p>The employer must take all practicable steps to assist the claimant with the claimant's vocational rehabilitation under his or her individual rehabilitation plan: – s71</p> <p>There is no requirement for employers to keep a position open for an injured worker.</p>

7.2 Return to work provisions

The general aim of workers' compensation schemes in each jurisdiction is to return injured workers to work in a timely, safe and durable manner. The schemes aim to achieve a balance between injured workers returning to work as soon as possible and ensuring that they are fully recovered so as to avoid further injuries. Table 7.2 outlines the return to work provisions in each jurisdiction.

Table 7.2 - Return to work provisions (as at 30 June 2009)

Jurisdiction	Employers' responsibilities	Worker's Responsibilities	Incentives for new employers of injured workers
<p>New South Wales</p>	<ul style="list-style-type: none"> participate and cooperate in the establishment of an injury management plan: – s46 (1998 Act) comply with the provisions of the insurer's Injury Management Program and any Injury Management Plan: – s46 (1998 Act) establish a Return to Work program: – s52 (1998 Act) if a Category 1 employer (base tariff premium of over \$50 000), employ a Return to Work Coordinator who has undertaken approved training, and provide suitable employment (if reasonably practicable to do so) on request from partially incapacitated workers: – s49(1) (1998 Act) 	<ul style="list-style-type: none"> participate and cooperate in the establishment of an Injury Management Plan (if significant injury): – s47(1) (1998 Act) comply with the obligations imposed by the Injury Management Plan: – s47(2) (1998 Act) nominate a treating doctor who is prepared to participate in the development and arrangements under the Injury Management Plan: – s47(3) (1998 Act) authorise the treating doctor to provide relevant information to the insurer and employer: – s47(5) (1998 Act), and make reasonable efforts to return to work with the pre-injury employer as soon as possible, having regard to the nature of the injury: – s48 (1998 Act) <p>Unreasonable failure to comply can result in suspension or cessation of weekly payments</p>	<p>JobCover Placement Program offers to new employers:</p> <ul style="list-style-type: none"> Training/employment allowance: up to \$300.00 per week Premium exemption: a premium exemption for employer for the first 12 months Second injury costs: costs of any claim within 12 months relating to the existing injury, excluded from experience-based premium adjustments <p>Work Trial A Work Trial places an injured worker for a short period of time with a host employer when the worker's pre-injury employer is unable to provide suitable duties. It provides increased workplace based opportunities for injured workers to develop marketable skills, demonstrate their ability to undertake employment and upgrade their physical and psychological capacity for work. An injured worker may participate in one or more Work Trials for a combined total of 12 weeks</p> <p>Retraining WorkCover funds retraining of injured workers who cannot return to their pre-injury duties, have insufficient marketable and transferable skills with which to seek suitable employment and meet a number of other conditions. Cost of training does not form part of the injured worker's claims costs. Expenses that may be covered include course fees, travel, HECS, accommodation, textbooks and stationery, and equipment</p> <p>Equipment Provides injured workers with essential equipment or workplace modifications to return to suitable employment or to safely and successfully participate in training</p>

Jurisdiction	Employers' responsibilities	Worker's Responsibilities	Incentives for new employers of injured workers
Victoria	<ul style="list-style-type: none"> appoint a return to work coordinator and develop a written occupational rehabilitation program with workers and make available to all workers, if annual payroll is \$1 million or more: – s156 & s158 prepare a return to work plan and nominate a return to work coordinator for any injured worker with an incapacity for work no later than 10 days after a claim being accepted or determined in the worker's favour, or the employer becomes aware that the worker's period of incapacity is likely to exceed 20 days, whichever is the later (whatever the size of the business): – s156(2) & s156(3) offer pre-injury equivalent or suitable employment within 12 months of the claim being accepted or determined in the worker's favour: – s155A keep a register of injuries: – s101 develop individual return to work plans for injured workers: – s160; have a risk management program in place: – s159 stay in touch with injured worker. <p>Failure to comply can result in substantial fines.</p>	<ul style="list-style-type: none"> make 'reasonable efforts' to return to work, including: <ul style="list-style-type: none"> a) participating in rehabilitation or RTW plan b) participating in assessments of incapacity, rehabilitation progress and employment prospects; and c) complying with requests to provide information as to current nature and extent of injury and incapacity: – s93A, s93B, s93CA, s93CB, s93CC, s93CD provide certificates of capacity to remain entitled to weekly payments: – s111 authorise provider of hospital or medical services to provide information regarding injury and treatment in relation to the claim: – s103(d) submit to reasonable medical examinations on request: – s112. <p>Benefits may be suspended (including forfeiture of weekly payments during suspension period) or terminated if worker fails to comply.</p>	<p>WISE (WorkCover Incentive Scheme for Employers) scheme is for new employers (other than pre-injury employer) who employ workers ready to return to work but unable to do so with former employer. Includes the following incentives:</p> <ul style="list-style-type: none"> a) wage subsidy to employer of up to \$26 000 for first 12 months of employment of 15 hours per week or more depending on number of hours worked b) protection from premium impacts if the worker has a new injury, and c) an exemption from costs if worker's original injury recurs and the new employment is not a contributing factor to the recurrence.
Queensland	<p>The employer must:</p> <ul style="list-style-type: none"> give WorkCover a copy of the suitable duties program take every reasonable step to help with the worker's rehabilitation: – s228; and have rehabilitation policy and procedures in place: – s227(2) <p>Workplaces with wages of \$1.826 million or more, in a high risk industry (defined in the <i>Workers' Compensation and Rehabilitation Regulation 2003</i>) or have wages in Queensland for the preceding financial year more than \$5.998</p>	<ul style="list-style-type: none"> take part in a rehabilitation program. Failure to comply without reasonable excuse may result in entitlements being suspended: – s232 let WorkCover know when condition has changed provide continuous medical certificates to WorkCover; and give written notice within 10 business days of the worker returning to work, or engagement in a call to the insurer: – s136 	<p>No direct financial subsidy scheme. Suitable duties program:</p> <ul style="list-style-type: none"> a) total incapacity: When a worker returns to work on a graduated RTW program, the insurer may be responsible for wages paid for an agreed period. The employer is encouraged to pay wages according to partial incapacity as at (b); and b) partial incapacity: When a worker returns to work on a graduated RTW program, employer is responsible for wages paid for the hours worked, with the insurer paying the difference

Jurisdiction	Employers' responsibilities	Worker's Responsibilities	Incentives for new employers of injured workers
	<p>million must have an accredited Rehabilitation and Return to Work Coordinator and have rehabilitation policy and procedures in place: – Reg 99C. The rehabilitation coordinator, and policy and procedures, must be accredited by Q-COMP: – s41 and s43</p> <p>Employers must take all reasonable steps to assist or provide rehabilitation and suitable duties to injured workers. Within 12 months after a worker sustains an injury, the employer must not dismiss the worker solely or mainly because of the injury: – s232B</p>		<p>Exempt employer policy: Host employer of injured worker is not responsible for aggravation or exacerbation of the same injury for a period of 6 months (applied administratively by WorkCover Queensland)</p> <p>Return to Work Assist – case management and career guidance for workers at risk of long-term unemployment due to injury.</p>
Western Australia	<ul style="list-style-type: none"> • employer must have injury management system in place: – s155B; and • establish return to work program as soon as practicable after doctor writes to insurer saying a return to work program should be established or medical certificate states total or partial return to work: – s155C 	<ul style="list-style-type: none"> • attend medical examinations: – s64 • participate in return to work program: – s72B; and • notify employer within 7 days if returning to employment: – s59 	No direct financial subsidy scheme.
South Australia	<ul style="list-style-type: none"> • comply with an obligation imposed through a rehabilitation program or RTW plan: – s26, s28A(4), and reg 5 • appoint a R&RTW co-ordinator – s28D(1) • provide suitable employment for which the worker is fit, if reasonably practicable – s58B(1) 	<ul style="list-style-type: none"> • comply with an obligation imposed through a rehabilitation program or RTW plan: – s26, s28A(4), s36(1a)(d) and reg 5 • make every reasonable effort to return to work – s35(7) • undertake work that has been offered if capable of performing, and take steps to find or obtain suitable employment – 36(1a)(f) • participate in assessments regarding future employment prospects – s36(1a)(fa) 	<p>WorkCoverSA's Re-employment employment initiative that gives an employer a financial incentive for providing employment to injured workers.</p> <p>The aim of the scheme is to assist workers to find a new job if they have been unable to return to their pre injury employer.</p> <p>The scheme provides:</p> <ul style="list-style-type: none"> • reimbursement of 75% of gross wages for the first three months of employment • reimbursement of 40% of gross wages for the second three months of employment • a retention bonus of 10% of gross wages paid (up to a maximum of \$2000) if the employment is sustained beyond 12 months

Jurisdiction	Employers' responsibilities	Worker's Responsibilities	Incentives for new employers of injured workers
<p>Tasmania</p>	<ul style="list-style-type: none"> • keep position open for injured worker for 12 months, unless it is not practicable to do so, or reason for position no longer exists: – s138A • provide suitable alternative duties for 12 months unless not reasonably practicable to do so: – s138B • prepare a return to work plan where incapacity exceeds 14 days: – s139(1) • prepare and display a rehabilitation policy where there are more than 20 workers: – s143(1), and • provide a person who is responsible for coordinating return to work in accordance with the employer's rehabilitation policy (a rehabilitation coordinator), where there are more than 50 workers: – s143A 	<ul style="list-style-type: none"> • undertake a rehabilitation program or suitable alternative duties recommended by employer, failure or refusal may result in the worker's benefits being terminated/ reduced : – s86(d) • benefits may be suspended if worker refuses or obstructs medical examination or treatment: – s85(6) • make themselves available for medical examinations: – s85(1), and • submit medical reports to employer: – s85(3) 	<p>No direct financial subsidy scheme.</p>
<p>Northern Territory</p>	<ul style="list-style-type: none"> • take all reasonable steps to provide injured worker with suitable employment and participate in retraining the worker so far as is practicable: – s75A(1) • refer worker to an alternative employment incentive scheme developed by the Authority if employer cannot provide suitable employment: – s75A(2) • ensure return to work and rehabilitation program is provided by an accredited vocational rehabilitation provider: – s75B(1)(A), and • pay for any workplace modification and rehabilitation training: – s76(1) <p>If an injured worker is employed by another employer under an alternative employer incentive scheme, the first employer must compensate the worker for any aggravation, acceleration or exacerbation of the injury that occurs within one year after the worker starts employment with the other employer : – 75A(3)</p>	<ul style="list-style-type: none"> • undertake medical, surgical and rehabilitation treatment, rehabilitation training or workplace based return to work program: – s75B(1) • to attend medical exam: – s75B(1), and • to provide ongoing certification of incapacity: – s91A <p>Benefits may be terminated if there is unreasonable refusal or failure.</p> <ul style="list-style-type: none"> • authorise information about injury to be released to employer and insurer if claim form specifies: – s82(4), and • notify employer immediately when returning to work with another employer or their circumstances change: – s90 	<p>Alternative Employer Incentive Scheme</p> <p>The scheme provides:</p> <ul style="list-style-type: none"> • weekly benefits continue to be paid by original employer for up to a twelve week training/ placement period (no payment is made by the host employer) • after initial training/placement period, the host employer provides employment, the host employer will be eligible for an incentive payment. This is only payable after the completion of twelve weeks of paid employment. It is either 45% of average weekly earnings or 50% of the wage, whichever is lesser and is payable in a lump sum at the end of the 12 weeks paid employment <p>there may be further incentives for up to 12 months; and the original employer's insurer will guarantee to indemnify the alternative employer for any aggravation, acceleration or exacerbation for the pre-existing compensable condition</p>

Jurisdiction	Employers' responsibilities	Worker's Responsibilities	Incentives for new employers of injured workers
			during the first 12 months of the work placement.
Australian Capital Territory	<ul style="list-style-type: none"> take part and cooperate in the establishment of a Personal Injury Plan (PIP) for significant injuries and comply with obligations imposed under the PIP : – s100 establish a Return-to-Work Program in relation to policies and procedures for the rehabilitation of injured workers: – s109 provide suitable employment if requested by the worker within 6 months from the day the worker became entitled to compensation: – s105 & s106; and comply with obligations imposed by insurer's injury management program: – s91 	<ul style="list-style-type: none"> participate & cooperate in the establishment of a PIP and comply with reasonable obligations arising from that plan, including any medical or surgical treatment, rehabilitation and retraining: – s101 nominate a treating doctor who is prepared to take part in the worker's PIP : – s102; and make all reasonable efforts to return to work with the pre-injury employer as soon as possible: – s104 <p>If a worker fails to comply with their obligations, their weekly compensation payments may be stopped: – s113</p>	<p>Second injury arrangements are available to encourage the employment of injured workers: – s108(1)</p>
Commonwealth (Comcare)	<ul style="list-style-type: none"> the employer is given statutory powers under the SRC Act (s36 and s37) to assess, develop and deliver rehabilitation programs for injured employees. comply with Comcare's rehabilitation guidelines: – s41 - which require development of an employer specific rehabilitation policy which addresses: early intervention case management; rehabilitation assessment and rehabilitation programs; and the provision of suitable duties for assessment: the employer may, and shall on written request from the employee, undertake an assessment of the employee's capability to undertake a rehabilitation program: - s36(1) and The employer may arrange for the employee to be examined to assist in the assessment (s36) of capability of undertaking rehabilitation and must have regard to any assessment report, amongst other things, in developing a (s37) rehabilitation program. for a program: the employer may make arrangements with an approved rehabilitation 	<ul style="list-style-type: none"> the employee shall cooperate in the assessment of the capacity to undertake a rehabilitation program the employee shall undergo a required examination: - s36(3) the employee should cooperate and actively participate with the case manager and/or rehabilitation provider in the development of the rehabilitation program All rights and proceedings under the Act are suspended if an employee fails, without reasonable excuse, to undergo a rehabilitation examination or a program: - s36(4) and s37(7) 	<ul style="list-style-type: none"> The employer at time of injury (the liable employer) may arrange a work trial at its expense with the new employer (host employer) when a return to employment with the liable employer is not possible. The liable employer is responsible for the provision of the rehabilitation program, its expense and any shortfall in income as a result of the incapacity. The liable employer may negotiate with the host employer to cover full wages and on-costs for part or all of the work trial as an incentive. At the conclusion of the work trial the liable employer will continue to meet the cost of any ongoing rehabilitation and any income loss arising from the injury. (Liable employers under the Comcare premium arrangements would have these costs reimbursed by Comcare.) <p>The host employer is required to maintain OHS responsibilities and after the work trial should offer appropriate vacancies to the employee and be liable for any subsequent injury.</p>

Jurisdiction	Employers' responsibilities	Worker's Responsibilities	Incentives for new employers of injured workers
	<p>provider to provide a rehabilitation program or provide for the rehabilitation program itself: - s37(2)</p> <ul style="list-style-type: none"> the employer shall have regard to the assessment, future liability, cost of program, improvement in the employee's opportunities, psychological effect on the employee if not providing the program, employee's attitude to the program, relative merits of alternative programs etc.: - s37(3) the employer is required to advise the employee in writing of its decision, the reasons for its decision and notice of rights of review of its decision: - s37(1) and s61(1) during or on upon completion of the rehabilitation program the employer shall take all reasonable steps to provide suitable employment: - s40 		
Commonwealth (Seacare)	<ul style="list-style-type: none"> the employer is given statutory powers under the Seafarers Act (s49 and s50) to develop and deliver rehabilitation programs for injured employees. if an employee suffers an injury that lasts, or is expected to last, 28 days, which results in an impairment or an incapacity for work, the employee's employer must, within 28 days after receiving notice of the injury, arrange for the assessment of the employee's capability of undertaking a rehabilitation program: - s49(1) If an employee of an employer is assessed under section 49 as capable of undertaking a rehabilitation program, the employer must, after consulting the employee in relation to: <ul style="list-style-type: none"> (a) the selection of an approved program provider, and (b) the development of an appropriate rehabilitation program by an approved program provider; make arrangements with an approved program provider for the provision of an 	<ul style="list-style-type: none"> the employee's quick and full recovery and return to work will be greatly assisted if they: <ul style="list-style-type: none"> - participate in treatment and a rehabilitation program - maintain communication with the employer, rehabilitation provider and work colleagues. <p>("A Best Practice – Seafarers Rehabilitation and Return to Work" - Publication)</p> all rights and proceedings under the Act are suspended if an employee fails, without reasonable excuse, to undergo a rehabilitation examination or a program: - s49(4) and s50(5) 	<ul style="list-style-type: none"> The employer may arrange for employment as a supernumerary on board a ship or ashore following consultation with all key parties. <p>Where return to sea is unlikely the employer should determine whether suitable employment can be found ashore and if such employment is outside of the seafaring industry the employer is to assist the employee in finding such suitable employment with another employer whether inside or outside the industry. ("Best Practice Guide – Seafarers Rehabilitation and Return to Work" – Publication)</p>

Jurisdiction	Employers' responsibilities	Worker's Responsibilities	Incentives for new employers of injured workers
Commonwealth (MRCS)	<ul style="list-style-type: none"> appropriate rehabilitation program:- s50(1) <ul style="list-style-type: none"> If an employee is undertaking, or has completed, a rehabilitation program, his or her employer must take all reasonable steps to provide the employee with suitable employment, or to assist the employee to find such employment:- s52 		
	<ul style="list-style-type: none"> The rehabilitation authority is: <ul style="list-style-type: none"> (a) the person's service chief for a time when the person: <ul style="list-style-type: none"> (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.- s39 MRCA The rehabilitation authority for a person may, on its own initiative, carry out an initial assessment or a further assessment of the person's capacity for rehabilitation. The rehabilitation authority: <ul style="list-style-type: none"> (a) must carry out an initial assessment, and (b) may carry out a further assessment; if the person requests the rehabilitation authority to do so. <p>The rehabilitation authority must carry out an assessment before ceasing or varying a rehabilitation program. - s44</p> <ul style="list-style-type: none"> The rehabilitation authority may require the person to undergo an examination. - s45 The examination is to be carried out by an examiner nominated by the rehabilitation authority whom the authority is satisfied has suitable qualifications or expertise to carry out the examination. <p>The examiner must give a written report of the examination to the rehabilitation authority.</p>	<ul style="list-style-type: none"> A person may request his or her rehabilitation authority to carry out an initial assessment or a further assessment of his or her capacity for rehabilitation. - s44 If the rehabilitation authority for a person requires the person to undergo an examination and the person: <ul style="list-style-type: none"> (a) refuses or fails to undergo the examination, or (b) in any way obstructs the examination; the rehabilitation 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.- s50 If the rehabilitation authority for a person requires the person to undertake a rehabilitation program, and the person refuses or fails to undertake the rehabilitation program, the rehabilitation 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 person undertakes the rehabilitation program.- s52 	<ul style="list-style-type: none"> A determination of the original rehabilitation authority that is in force immediately before the rehabilitation authority changes has effect as a determination of the new rehabilitation authority. The new rehabilitation authority is responsible for giving effect to the determination. - s40 The person's rehabilitation authority must take all reasonable steps to: <ul style="list-style-type: none"> (a) if the person is a Permanent Forces member who has not been identified by or on behalf of the person's service chief as being likely to be discharged from the Permanent Forces for medical reasons—assist the person to find suitable work within the Permanent Forces, or (b) if the person is a continuous full time Reservist who has not been identified by or on behalf of the person's service chief as being likely to be discharged from the Reserves for medical reasons—assist the person to find suitable work as a continuous full time Reservist, or (c) if the person has 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—assist the person to find suitable civilian work.- s61 If a person: <ul style="list-style-type: none"> (i) is a part time Reservist, a cadet or a declared member; or (ii) is a former member;

Jurisdiction	Employers' responsibilities	Worker's Responsibilities	Incentives for new employers of injured workers
	<p>The report must include:</p> <ul style="list-style-type: none"> (a) an assessment of the person's capacity for rehabilitation; and (b) if the person has a capacity for rehabilitation—the kinds of rehabilitation from which the person would benefit; and (c) any other information relating to the provision of a rehabilitation program for the person that the rehabilitation authority requires.- s46 <ul style="list-style-type: none"> • The rehabilitation authority for a person may determine that the person is to undertake a rehabilitation program specified in the determination if an assessment has been made of the person's capacity for rehabilitation. <p>In making a determination in respect of the person, the person's rehabilitation authority is to have regard to the following:</p> <ul style="list-style-type: none"> (a) any written report in respect of the person under subsection 46(3); (b) any reduction in the future liability of the Commonwealth to pay or provide compensation if the program is undertaken; (c) the cost of the program; (d) any improvement in the person's opportunity to be engaged in work after completing the program; (e) the person's attitude to the program; (f) the relative merits of any alternative and appropriate rehabilitation program; (g) any other matter the rehabilitation authority considers relevant.- s51 <ul style="list-style-type: none"> • The rehabilitation authority may, on its own initiative or on written application by the person, determine that: <ul style="list-style-type: none"> (a) the rehabilitation program cease, or (b) the rehabilitation program be varied.- s53 		<p>the person's rehabilitation authority must take all reasonable steps to assist the person to find suitable civilian work.- s62</p> <ul style="list-style-type: none"> • If: <ul style="list-style-type: none"> (a) the person is a Permanent Forces member or a continuous full time Reservist, and (b) the person has 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, <p>the person's service chief must appoint a case manager for the person. The role of the case manager is to assist the person in the transition to civilian life, including by advising the person about entitlements and services for which the person may be eligible as a member or former member, and about how to obtain access to such entitlements and services.- s64</p>

Jurisdiction	Employers' responsibilities	Worker's Responsibilities	Incentives for new employers of injured workers
New Zealand	<ul style="list-style-type: none"> • employer to take all practicable steps to assist a claimant with their vocational rehabilitation, if ACC notifies them that it is reasonably practicable for the claimant to return to their usual employment with that employer: – s71 	<ul style="list-style-type: none"> • provide medical certificates and other relevant information • authorise ACC to obtain medical and other records • undergo assessment, and • cooperate with ACC in the development of an individual rehabilitation plan and participate 	<p>No direct financial subsidy scheme.</p> <p>Recovery of costs can be made from previous insurer if the effects of new injury are exacerbated by a previous injury.</p>

8. Miscellaneous

8.1 Leave Accrual while on Workers' Compensation

Normal leave arrangements such as recreation and long-service leave may be affected when a worker is receiving compensation for a workplace-related injury. Provisions relating to the accrual of leave may not necessarily be covered in workers' compensation legislation, but are included for information purposes.

Table 8.1 – Treatment of leave provisions while on workers' compensation as at 30 June 2009

Jurisdiction	Leave Provisions
New South Wales	<p>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 1987 Act</p> <p>The NSW Office of Industrial Relations advises that all entitlements such as leave continue to accrue as long as a contract of employment exists.</p>
Victoria	<p>In Victoria, leave provisions are not covered under workers' compensation legislation.</p> <p>WorkSafe Victoria does not provide advice on leave issues and refers enquiries to the Workplace Authority.</p>
Queensland	<p>Issues regarding leave are governed by the <i>Industrial Relations Act 1999</i>.</p>
Western Australia	<p>Western Australian workers' compensation legislation does not provide for annual or other forms of leave.</p> <p>Wageline WA advise that annual leave and long service leave only accrues for the first fifteen days of incapacity, but being on compensation leave does not break a period that counts towards long service leave.</p>
South Australia	<p>In South Australia, annual leave continues to accrue for the first twelve months of incapacity, for incapacity extending beyond twelve months, that leave is deemed to have been taken and no more accrues.</p> <p>Any annual leave accrued before a compensable injury remains extant.</p> <p>Long service leave entitlements continue to accrue throughout periods of incapacity.</p>
Tasmania	<p>Tasmania's workers' compensation legislation does not deal with accrual of annual or long service leave.</p> <p>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.</p>
Northern Territory	<p>The workers' compensation law in the Northern Territory is silent on the matter of leave and the NT WorkSafe advise that is entirely a workplace relations matter between employers and workers, although presumably under the relevant industrial instrument or relevant legislation.</p>

Jurisdiction	Leave Provisions
Australian Capital Territory	<p>In the ACT it is very similar to NSW in which leave provisions are not covered under the workers compensation legislation, other than section 46 which states:</p> <p>46 <i>Effect of payment of weekly compensation on other benefits etc</i></p> <p><i>This part is not intended to affect an entitlement that, apart from this Act, the worker has to a benefit or payment except so far as a law in force in the ACT otherwise applies.</i></p> <p><i>Examples of benefits not affected</i></p> <p><i>1 accrual of long service leave</i></p> <p><i>2 accrual of annual leave</i></p> <p><i>Note</i> <i>An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).</i></p> <p>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>Workplace Relations Act 1996</i>. These are administered by the Workplace Ombudsman and therefore enquiries of this nature would be usually directed to them in the first instance or in the case of a construction worker or cleaner they may be directed to the Long Service Leave Board.</p> <p>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.</p>
Commonwealth	<p>An injured employee cannot take leave other than maternity leave while they are on compensation leave.</p> <p>Annual leave and sick leave accrue during the first 45 weeks of incapacity.</p> <p>Long service leave accrues throughout compensation leave.</p>
New Zealand	<p>Leave provisions are not covered under accident compensation legislation.</p> <p>Annual leave continues to accrue if an employee is receiving accident compensation - Holidays Act 2003 (administered by Department of Labour)</p>

8.2 Superannuation and Workers Compensation

Table 8.2 - Nexus between superannuation and workers' compensation (30 June 2009).

Jurisdiction	Included in Wages for Premium Calculation	Included with Income Replacement Payments
New South Wales	Yes	No
Victoria	Yes	No
Queensland	Yes	No
Western Australia	No	No

Jurisdiction	Included in Wages for Premium Calculation	Included with Income Replacement Payments
South Australia	Yes. Any payment including a premium or lump sum paid to a superannuation fund or retirement annuity plan for the benefit of a worker. Includes employer contributions under the Superannuation Guarantee legislation, employer contributions under an award, additional employer contributions and employer contributions forming part of a worker's salary sacrifice arrangement	No
Tasmania	Salary sacrifice only	No
Northern Territory	No	No
Australian Capital Territory	No – employer contribution Yes – employee contribution amount	No
Commonwealth	No – employer contribution Yes – employee contribution amount	No – employer contribution amount Yes – employee contribution amount while still employed
New Zealand	No	No

9. 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.

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 which allow workers who are injured away from their main State or Territory of employment to be covered for 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 (MRCS) 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.

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 (MRCS): 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.

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)

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 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.

10. Acronyms and Abbreviations

AAT	Administrative Appeals Tribunal (Cth)
ABS	Australian Bureau of Statistics
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
IPRC Act	Injury Prevention, Rehabilitation and Compensation Act (NZ)
JAS-ANZ	Joint Accreditation System of Australia & New Zealand
MAT	Medical Assessment Tribunal
MRCA	Military Rehabilitation and Compensation Act (Cth)
MRCC	Military Rehabilitation and Compensation Commission
MRCS	Military Rehabilitation and Compensation Scheme
NTPS	Northern Territory Public Service
NWE	Normal Weekly Earnings (Qld, Tas, NT, Cth)
NWE	Notional Weekly Earnings (SA)
OHS	Occupational Health and Safety
PIA WE	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)
TAFE	Technical and Further Education
TMF	Treasury Managed Fund (NSW)
TRMF	Tasmanian Risk Management Fund (Tas)
VEA	Veterans Entitlement Act
VWA	Victorian WorkCover Authority
WAVE	Workers Average Weekly Earnings (SA)
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

* stated-based statistics