

# Key Workers' Compensation Information, Australia



**safe work australia**

**2014**

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# Key Workers' Compensation Information, Australia 2014

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## Background

- Australian workers' compensation systems were originally based on nineteenth century British law. Before the implementation of modern workers' compensation arrangements, an injured worker's only means of receiving compensation was to sue their employer for negligence at common law.
- The basic principle behind workers' compensation is that as it is employers that profit from the labour of others, they should bear the full cost of that labour, including costs associated with work related injury. Injury in this sense includes the full range of physical injuries, ailments, illnesses, aggravation or acceleration of pre-existing injuries.
- All Australian jurisdictions have workers' compensation laws that are 'no fault'. That is, to be eligible, workers only have to prove that their injuries were work related - they do not need to prove negligence on the part of an employer.
- There are eleven major workers' compensation systems in Australia, six Australian States and both Territories have developed their own workers' compensation laws and the Commonwealth has three schemes: the first is for Australian Government employees and the employees of licensed authorities, the second for certain seafarers, and the third for Australian Defence Force personnel under the *Military Rehabilitation and Compensation Act*.
- The majority of tables in this booklet provide a snapshot of workers' compensation arrangements as at 30 September 2013. The Australian Capital Territory has arrangements as at 30 June 2013.

## What is workers' compensation?

- Workers' compensation is income replacement payments, reimbursement of hospital and medical costs and lump sum payments for permanent incapacities and fatalities made to workers (or their families) injured or made ill in the course of their work.
- The payments are funded by workers' compensation schemes, which are themselves funded by a compulsory levy imposed by governments on employers to cover their potential liabilities associated with injured workers. Self-insurers do not have to pay workers' compensation premiums, yet they have the responsibility to meet all of their claim liabilities. They are still required to pay a

levy towards administering the scheme.

- Schemes currently cover 86% of the workforce (~ 10.53 million workers).
- The schemes do not cover the self employed, sole traders and independent contractors (about 1.7 million people) who need to take out personal injury insurance through private sector insurance.

## What is an injured worker entitled to?

- Income replacement while they are recovering from their injury. This is the most expensive part of compensation, accounting for more than half of scheme costs.
- Medical treatment is usually reimbursed. This includes medical, ambulance and other related medical costs, household help, aids and appliances, etc.
- Return to work plans, involving work-related rehabilitation, modification of workplaces and work duties. These also usually involve a third party such as occupational therapists, physiotherapists, and sometimes vocational retraining programs.
- Death benefits including special provisions for children and funeral costs.
- Lump sum compensation for permanent impairments including loss of limb, loss of function (eyes and ears), loss of body function such as walking, loss of amenity of life, disfigurement, reduction in life expectancy and pain and suffering.

## Who is eligible?

- Australia's schemes are no fault schemes - that is an injured worker does not need to prove negligence on the part of the employer.
- There are three preconditions to receiving compensation which are:
  - the worker is an employee as defined in the law of their jurisdiction
  - the worker has a medical condition that was diagnosed by a

qualified practitioner who stated that the condition arose out of or in the course of employment, and

- the worker has suffered a financial loss (such as loss of income or has incurred medical costs).
- Workers' compensation is *not* given for general 'harm', such as hurt feelings or emotional distress or as the result of discrimination.

## What does it cost?

- Preliminary data from 2011–12 show there were 128 050 serious workers' compensation claims involving one or more week of time lost from work, a permanent incapacity or fatality. This equates to 12.2 claims for serious injury for every 1 000 employees.
- In 2011–12, the total amount paid by workers' compensation schemes was \$7.8 billion. This consisted of:
  - \$4.19 billion of direct payments (incapacity, permanent impairment and common law) (53.5%)
  - \$1.82 billion in medical and other services, including rehabilitation (23.3%)
  - \$1.43 billion of insurance operations costs (18.3%), and
  - \$390 million of other administrative costs (5.0%).
- Premiums are usually expressed as a percentage of the employer's payroll. The standardised average Australian premium in 2011–12 was 1.51% of payroll, however for individual employers, premiums can range from 0.2% to 11.7% depending on the level of risk associated with the work.
- Self-insurance allows employers to manage their own workers' compensation liabilities, provided that they can prove they are capable of doing so by having effective management systems and demonstrating they are financially viable.
- Note: figures quoted are based on data from the 15th edition of the *Comparative Performance Monitoring report*.

For further information on the tables presented in this booklet, or workers' compensation in general, please refer to the *Comparison of Workers' Compensation Arrangements, June 2014*.

## Agencies responsible for workers' compensation functions

Different agencies in each jurisdiction are responsible for different aspects of the workers' compensation process.

Table 1 - Responsible Agencies

Jurisdiction	Policy Regulator	Premium	Claims	Disputes
New South Wales	WorkCover NSW for both	WorkCover NSW	7 private sector agents, 60 self-insurers and specialised insurers and SICorp for most public sector employers	Workers' Compensation Commission
Victoria	Victorian WorkCover Authority for both	Victorian WorkCover Authority	5 private sector agents and 38 self-insurers	Victorian WorkCover, Accident Compensation Conciliation Service (ACCS), Medical Panels, Magistrates' or County Court
Queensland	Dept. of Justice and Attorney-General Workers' Compensation Regulator	WorkCover Queensland	WorkCover Queensland and 25 self-insurers	Workers' Compensation Regulator, Queensland Industrial Relations Commission or Industrial Magistrate, Industrial Court
Western Australia	WorkCover WA for both	Insurers subject to WorkCover WA oversight	8 private sector insurers, 27 self-insurers (exempt employers) and the Insurance Commission of WA	Conciliation and Arbitration Services

<b>South Australia</b>	WorkCover SA for both	WorkCover SA	1 private sector agent, 66 self-insurers and 44 Crown self-insurers	Workers Compensation Tribunal, Medical Panels SA, WorkCover Ombudsman
<b>Tasmania</b>	Dept. of Justice WorkSafe Tasmania	Licensed private sector insurers, subject to WorkCover Tas oversight	7 private sector insurers and 11 self-insurers	Workers' Rehabilitation and Compensation Tribunal, Supreme Court
<b>Northern Territory</b>	Dept. of Business, NT WorkSafe	Private sector insurers	5 private sector insurers	Mediation coordinated by NT WorkSafe, Work Health Court
<b>ACT Private</b>	WorkSafe ACT, Justice and Community Services Directorate WorkSafe ACT	Private sector insurers	7 approved insurers and 7 self-insurers	Conciliation, Arbitration, Magistrates Court, Supreme Court
<b>C'wealth Comcare</b>	Dept. of Employment	Comcare	Comcare / self-insurers and their agents.	AAT, Federal Court
<b>C'wealth Seacare</b>	Dept. of Employment	Private sector insurers	Employers / insurers	AAT, Federal Court
<b>C'wealth DVA</b>	Military Rehabilitation & Compensation Commission	N/A	DVA	Veterans' Review Board, AAT, Federal Court

## Legislation

Each jurisdiction has its own legislation covering workers' compensation.

Table 2 - Workers' Compensation Legislation

Jurisdiction	Legislation
New South Wales	<i>Workplace Injury Management and Workers Compensation Act 1998</i> <i>Workers Compensation Act 1987</i>
Victoria	<i>Accident Compensation Act 1985</i> <i>Accident Compensation (WorkCover Insurance) Act 1993</i> <i>Workplace Injury Rehabilitation and Compensation Act 2013 (from 1 July 2014)</i>
Queensland	<i>Workers' Compensation and Rehabilitation Act 2003</i>
Western Australia	<i>Workers' Compensation and Injury Management Act 1981</i>
South Australia	<i>Workers Rehabilitation and Compensation Act 1986</i> <i>WorkCover Corporation Act 1994</i>
Tasmania	<i>Workers Rehabilitation and Compensation Act 1988</i>
Northern Territory	<i>Workers Rehabilitation and Compensation Act</i>
ACT Private	<i>Workers Compensation Act 1951</i>
C'wealth Comcare	<i>Safety, Rehabilitation and Compensation Act 1988</i>
C'wealth Seacare	<i>Seafarers Rehabilitation and Compensation Act 1992</i>
C'wealth DVA	<i>Military Rehabilitation and Compensation Act 2004</i>

## Statistics

The table below lists key workers' compensation statistics for each of the jurisdictions. Data were sourced from the Comparative Performance Monitoring report 15th Edition (CPM15).

Table 3 - Australian Workers' Compensation Statistics, 2011–12

Jurisdiction	Employees Covered	Compensated Fatalities	Serious Claims <sup>1</sup>	Incidence Rate <sup>2</sup>	Frequency rate <sup>3</sup>	Durable RTW Rate <sup>4</sup>	Dispute Rate <sup>5</sup>	Standardised Average Premium Rate
New South Wales	3 201 000	51	43 150	13.5	8.0	76%	4.2%	1.70%
Victoria	2 631 800	38	23 640	9.0	5.5	76%	10.3%	1.34%
Queensland	1 988 700	60	29 430	14.8	8.8	75%	3.0%	1.42%
Western Australia	1 142 500	16	13 880	12.1	6.9	n/a	2.2%	1.21%
South Australia	727 400	3	9 110	12.5	7.7	66%	7.4%	2.51%
Tasmania	209 500	5	3 070	14.7	9.6	78%	7.2%	1.51%
Northern Territory	115 700	4	1 000	8.6	4.8	74%	5.4%	1.81%
ACT	134 900	5	1 790	13.3	8.2	n/a	n/a	1.99%
C'wealth Comcare	372 400	17	2 790	7.5	4.1	80%	3.5%	0.99%
C'wealth Seacare	5 400	0	200	37.0	8.8	60%	14.2%	3.12%
<b>Australia</b>	<b>10 529 400</b>	<b>199</b>	<b>128 050</b>	<b>12.2</b>	<b>7.2</b>	<b>75%</b>	<b>5.0%</b>	<b>1.51%</b>

1. Serious claims include all claims for a fatality, permanent incapacity or temporary incapacity that involved one or more weeks of compensation (excluding journey claims).

2. Incidence rate of serious claims (claims per 1000 employees).

3. Frequency rate of serious claims (claims per million hours worked).

4. The durable RTW rate is the proportion of injured workers who have returned to work and were still working at the time of interview in a survey conducted by Campbell Research and Consulting, seven to nine months after their claim.

5. A new definition designed to improve comparability among jurisdictions was implemented in CPM 14. The number of active claims in the reference financial year rather than new claims lodged in the reference financial year are used to calculate dispute rates.

## Definition of injury and employment contribution

Each jurisdiction has slightly different definitions of an injury and the degree to which employment contributes to the injury for a claim to be accepted.

Table 4 - Injury and contribution of employment

Jurisdiction	Definition of 'injury' for purposes of coverage	Employment contribution
New South Wales	'... injury arising out of or in the course of employment... includes a disease if employment was main contributing factor ... does not include (except in the case of a worker employed in or about a mine) a dust disease...'	No compensation is payable 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...'	Compensation is not payable in respect of the following injuries unless the worker's employment was a significant contributing factor to the injury: a) a heart attack or stroke injury; b) a disease contracted by a worker in the course of employment (whether at, or away from, the place of employment); c) a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease
Queensland	'... a personal injury arising out of, or in the course of, employment...'	A significant contributing factor
Western Australia	'... a personal injury by accident arising out of or in the course of the employment...'	Injury includes: a disease contracted by a worker in the course of his employment at or away from his place of employment and to which the employment was a contributing factor and contributed to a significant degree
South Australia	'... injury arises out of, or in the course of employment...'	A substantial cause (for psychiatric disabilities only)

<b>Tasmania</b>	<p>'An injury, not being a disease, arising out of, or in the course of employment'</p> <p>'an injury, which is a disease, to which his employment contributed to a substantial degree'</p>	<p>To a substantial degree, that is, employment is the 'major or most significant factor ' (for diseases only)</p> <p>Employment being the major or most significant contributing factor is also a requirement in relation to injuries that are a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease</p>
<b>Northern Territory</b>	<p>'... a physical or mental injury... out of or in the course of employment...'</p>	<p>To a material degree (for diseases and gradual process). That is employment was the real, proximate or effective cause</p> <p>A substantial contributing factor</p>
<b>ACT Private</b>	<p>'a physical or mental injury (including stress)... includes aggravation, acceleration or recurrence of a pre-existing injury ... arising out of, or in the course of, the worker's employment'</p>	
<b>C'wealth Comcare</b>	<p>'... a physical or mental injury arising out of, or in the course of, the employee's employment...', or '... an aggravation of a physical or mental injury...', or '... an ailment or aggravation of an ailment...'</p>	<p>To a significant degree (for diseases)</p>
<b>C'wealth Seacare</b>	<p>'... a physical or mental injury arising out of, or in the course of, the employee's employment...', or '... an aggravation of a physical or mental injury...' or '... any ailment suffered...or the aggravation of any such ailment...'</p>	<p>To a material degree (for diseases)</p>
<b>C'wealth DVA</b>	<p>'... any injury or disease (or recurrence) ... , or '... any aggravation of an injury or disease, or its signs and symptoms....'</p>	<p>Minimum material contribution required ("arose out of, or was attributable to")</p> <p>In a material degree (for aggravations only)</p>

## Journey claims

Entitlements for journey claims vary across the various workers' compensation schemes.

Table 5 - Coverage of journey claims

Jurisdiction	Journey to & from work	Journey undertaken for work purposes
New South Wales	Yes, (some restrictions) for workers such as police officers and firefighters For all other workers with injuries received on or after 19 June 2012 a substantial link must be made between employment and the incident causing the injury	Yes
Victoria	No	Yes, some restrictions
Queensland	Yes, some restrictions	Yes
Western Australia	No	Yes
South Australia	No	Yes
Tasmania	No, some exceptions	Yes
Northern Territory	Yes, some restrictions	Yes
ACT Private	Yes	Yes
C'wealth Comcare	No, some exceptions	Yes
C'wealth Seacare	Yes	Yes
C'wealth DVA	Yes, some exceptions	Yes, some exceptions

## Main benefits

### Important notes:

- The level and degree of entitlements in the accompanying tables are stated for illustrative purposes. These will not automatically apply to every injured employee and 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 a work related death or permanent impairment, will be based on the degree of financial loss a worker suffers as a result of a work-related injury.
- The amount of financial loss, including lost income, is determined differently in each jurisdiction.

### What are the incapacity benefits?

- Each scheme provides (within limits) a period of near-full income replacement of pre-injury earnings for workers who cannot return to work following their work-related injury.
- Incapacity benefits, also known as weekly payments, are 'stepped down' after a period of time, by a percentage or to a set amount, for workers who cannot earn an income because of their work-related injury.
- The range of incapacity benefits and step downs across the jurisdictions are shown in Table 6. In almost all arrangements, detailed provisions are made to further reduce the benefit based on an injured person's capacity to earn.

Table 6 - Incapacity payments as at 30 September 2013

Jurisdiction	100% wage replacement (weeks)	Final step-down (after week...)	Minimum amount after final step-down	Variation	Employer Excess	Financial Limit	Time limit	Age limit
New South Wales	13 (95% PIAWE <sup>1</sup> replacement) or maximum, whichever is lesser	13	The lesser of 80% PIAWE <sup>1</sup> or \$1 903.70	More for dependants, less capacity to earn	One week's weekly compensation	\$1 903.70 per week	—	Retirement age + 12 months
Victoria	13 (95% PIAWE <sup>1</sup> replacement) or maximum, whichever lesser	13	80% PIAWE <sup>1</sup>	If work capacity less than current weekly earnings	First 10 days, first \$642 of medical costs	\$2 050 per week	130 weeks unless no current work capacity	65 unless lower industry retirement age. If injured within 130 weeks of retirement, max. 130 weeks
Queensland	26 Award: > of 85% NWE <sup>2</sup> amount payable under industrial instrument No award: > of 80% QOTE <sup>3</sup> , 85% NWE <sup>2</sup> , <sup>1</sup>	104	Greater of 75% NWE <sup>2</sup> or 70% QOTE <sup>3</sup>	Subject to working under industrial award	Up to first \$1 370.10 weekly	Until weekly compensation equals \$296 165	5 years	—
Western Australia	13	13	85% of AWE <sup>4</sup>	Subject to award rates	No	\$2 448.50 per week	—	Age restrictions removed on 1 October 2011
South Australia	13	26	80% of AWE <sup>4</sup>	Subject to work capacity assessment	First two weeks of the period of incapacity	\$2 712.80 per week	130 weeks unless no current & continuing work capacity	If injured within 2 years of retirement, regardless of age, max 2 years

<b>Tasmania</b>	26	78	80% (or 85% if employer fails to provide suitable duties)	—	First weekly payment, first \$200 of other benefits	—	9 years (more for WPI<15%)	65 unless worker is over 64 at time of injury, then max 1 year
<b>Northern Territory</b>	26	26	75% NWE <sup>2</sup> (up to 90% for low income earners)	More for dependants, less capacity to earn	Any part day lost on day of injury	\$2 112.90 per week	—	65 years or 104 weeks if worker aged 63 or more at time of injury. If injury occurs after 66.5, then max 26 weeks
<b>ACT Private*</b>	26	26	65% of pre-injury earnings or statutory floor	More for dependants, less capacity to earn	Employers liable until insurer notified	—	—	65 unless worker is over 63 years at time of injury, then max 2 years
<b>C'wealth Comcare</b>	45	45	Lesser of 75% of NWE <sup>2</sup> or statutory amount (\$435.09)	More for dependants, less capacity to earn	Any part day lost on day of injury	150% of AWOTEFA <sup>5</sup> (\$2 134.05)	—	65 unless worker has reached 63 years at time of injury, in which case max 104 weeks
<b>C'wealth Seacare</b>	45	45	Lesser of 75% of NWE <sup>2</sup> or statutory amount (\$435.09)	More for dependants, less capacity to earn	No	150% of AWOTEFA <sup>5</sup> (\$2 134.05)	—	65 unless worker injured after 64 at time of injury, then max 1 year
<b>C'wealth DVA</b>	45	45	75% of NE <sup>6</sup>	—	No	—	—	65 unless worker has reached 63 years at time of injury, in which case max 104 weeks

\* as at 30 June 2013.

1. Pre-injury average weekly earnings
2. Normal weekly earnings
3. Queensland ordinary time earnings
4. Average Weekly Earnings
5. Average Weekly Ordinary Time Earnings of Full-time Adults
6. Normal earnings

## Medical treatment benefits

The table below shows the maximum amounts that a person can be compensated for the *reasonable* costs of medical treatment following a work-related injury.

Table 7 - Maximum amounts for medical treatment as at 30 September 2013

Jurisdiction	\$ Limit	Other
New South Wales	No limit to reasonable expenses	\$50 000 or a greater amount prescribed or directed by WC Commission
Victoria	No limit to reasonable expenses	Ceases 52 weeks after weekly payment entitlement ceases, or if compensation is payable only for medical and like services 52 weeks after the entitlement commenced
Queensland	No limit to reasonable expenses	Hospital - 4 days (> 4 days if reasonable)
Western Australia	\$62 023	Additional \$50 000 where the worker's social and financial circumstances justify it. In exceptional medical circumstances (along with > 15% WPI) a further \$250 000 (capped) may be granted for additional medical expenses
South Australia	No limit to reasonable expenses	—
Tasmania	No limit to reasonable expenses	Ceases 52 weeks after weekly payments cease, or after 52 weeks if compensation is payable only for medical and like services
Northern Territory	No limit to reasonable expenses	—
ACT Private*	No limit to reasonable expenses	Repairs on artificial aids or damage to clothing: Costs are as agreed with the insurer or \$676.63 indexed
C'wealth Comcare	No limit to reasonable expenses	—
C'wealth Seacare	No limit to reasonable expenses	—
C'wealth DVA	No limit to reasonable expenses	—

\* as at 30 June 2013.

## 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 (PI) where the degree of impairment is above a threshold percentage. 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 8 - Permanent impairment thresholds and entitlements as at 30 September 2013

Jurisdiction	% of impairment	Maximum Amount	Conditional Benefits
New South Wales	For exempt workers eg. police officers, paramedics and firefighters: >0% WPI (except for binaural hearing loss 6% and primary psychological injury 15%) and for pain and suffering (physical injury 10% and primary psychological injury 15%) For all other workers' claims made on or after 19 June 2012: >10% WPI except for psychological injury (15% WPI)	\$220 000 plus additional 5% for PI of spine \$50 000 for pain and suffering only for exempt workers	Thresholds for claims for: Work Injury Damages 15% WPI Commutation 15% WPI
Victoria	10% WPI except for psychiatric impairments and additional 10% WPI for further hearing loss 5% WPI for some musculoskeletal injuries with a date of injury on or after 3 December 2003 30% for psychiatric impairment not arising secondary to physical injury	\$555 350	Can access common law damages if granted a 'serious injury' certificate
Queensland	>0% WRI <sup>1</sup> generally 5% WRI <sup>1</sup> for hearing loss	\$296 165 (standard) \$621 965 (latent onset) (as at 1 July 2013)	If 30% WPI + up to \$296 165 additional lump sum If 15% + up to \$335 500 (gratuitous care)

Jurisdiction	% of impairment	Maximum Amount	Conditional Benefits
Western Australia	>0% WPI, except for: 10% WPI for initial noise induced hearing loss and 5% WPI for subsequent noise induced hearing loss	\$206 742 + \$155 057 in special circumstances	Additional expenses up to \$250 000 if no less than 15% WPI Common law: >15% WPI (limited damages), >25% WPI (unlimited damages)
South Australia	5% WPI for physical injuries Psychiatric impairment not covered	\$462 649	—
Tasmania	5% WPI for physical injuries >0% WPI for loss of all or part of fingers and toes 10% WPI for psychiatric impairment 5% WPI binaural hearing loss caused by industrial deafness	\$318 284	20% WPI for access to common law damages
Northern Territory	5% WPI Between 5% - 14% WPI, compensation calculated on sliding scale. Impairments of 15%-84% benefit equal to percentage given. >85% WPI receives maximum entitlement	\$292 989	—
ACT Private*	0% (no threshold) 6% threshold for hearing loss	\$135 325 single impairment \$202 988 multiple impairment	—
C'wealth Comcare	10% WPI 5% WPI for binaural hearing >0% WPI for finger / toe, taste / smell	\$172 314 (economic) \$64 618 (non economic)	—
C'wealth Seacare	10% WPI 10% WPI for hearing >0% WPI for finger / toe, taste / smell	\$172 314 (economic) \$64 618 (non economic)	—
C'wealth DVA	Initial compensation — 10 impairment points (IP) 5 IPs hearing, fingers, toes, taste and smell Additional compensation — 5 IPs	\$419 140	\$81 367 plus education scheme benefits, free medical treatment

## Death entitlements

Each jurisdiction has a benefit structure in place that provides for lump sum payments, funeral costs and weekly payments for dependants. Some jurisdictions provide additional payments for spouses and counselling.

Table 9 - Death entitlements as at 30 September 2013

Jurisdiction	Lump sum	Weekly payments / child	Funeral	Other
New South Wales	\$498 950	\$126.80	\$9 000	\$261.40 (dependant spouse - dust diseases)
	\$316 950 (dust diseases)	\$132.10 (dust diseases)		
Victoria	\$555 350	First 13 weeks: 95% of pre-injury earnings for dependant partner to max \$2050 per week 14 weeks to 3 years: 50% of earnings to max \$2050 Range of payments for dependant children	\$14 135	Counselling for family members up to \$5 870
Queensland	\$554 750 \$14 825 for dependant spouse \$29 640 for each other dependant family member, under 16 or a student	8% of QOTE (\$109.65) for the spouse if there is a dependant family member under 6 and payment of 10% QOTE (\$137.05) for each dependant under 16 or a student	Reasonable	—
Western Australia	\$283 418 (subject to labour price index)	A child's allowance of \$54.20 per week for each dependant child up to 16 or 21 if a student	\$9 219	—

Table 9 - Death entitlements as at 30 September 2013 continued

Jurisdiction	Lump sum	Weekly payments / child	Funeral	Other
South Australia	\$462 649	Orphaned child — 25% of deceased's notional weekly earnings Not orphaned — 12.5% of deceased's notional weekly earnings	\$9 769 (as at 1 January 2013)	Dependant spouse — 50% of deceased's NWE (less if partially dependant)
Tasmania	\$305 760	A dependant child is entitled to 15% of the basic salary commencing on the expiration of 13 weeks after the date of death (\$115.04 pw)	—	Dependant 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"> <li>• first 26 weeks: 100% of weekly payments</li> <li>• 26–78 weeks: 90% of weekly payments</li> <li>• 78 weeks-2 years: 80% of weekly payments</li> </ul>
Northern Territory	\$366 236 (260 x AWE) in prescribed proportions	10% of AWE (\$140.86) for each child under 16 or 21 if student (max 10 children)	\$7325	—
ACT Private*	\$202 988	\$67.66 per child CPI indexed	\$5 413	—
C'wealth Comcare	\$492 146	\$135.34 to each child under 16 (or 25 if full-time student)	\$10 971	—
C'wealth Seacare	\$492 146	\$135.34 per child under 16 (or 25 if full-time student)	\$5 967	—
C'wealth DVA	\$695 787	\$135.34 per child under 16 (or 25 if full-time student) \$3.10 MRCA supplement	\$10 971	Reasonable medical expenses for spouse and children Childrens education expenses

\* as at April 2013.

## Common law

With the introduction of statutory 'no-fault' workers' compensation schemes, access to common law has been restricted significantly 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, introduced threshold tests, placed restrictions on the types of damages that an injured worker can receive and/or placed caps on the amount of damages that can be awarded. If injured workers elect to pursue common law, they may have to reimburse their employer or WorkCover Authority for any statutory benefits paid out.

Table 10 - Access to Common Law as at 30 September 2013

Jurisdiction	Access	Type of damages	Threshold	Damages
New South Wales	Yes	Past and future economic loss of earnings	15% WPI <sup>1</sup> and other conditions	No cap
Victoria	Yes (limited) access to common law for workers injured from 20 Oct 1999	Pain & suffering, and/or economic loss	30% WPI <sup>1</sup> or narrative test: Additional requirement to prove a permanent loss earning capacity of 40% or more	Pain & suffering: min \$54 730, max \$555 350 Economic loss: min \$56 650, max \$1 275 570
Queensland	Yes	General damages (pain & suffering) and economic loss	WRI <sup>2</sup> of less than 20% or none, worker must decide to accept lump sum payment or seek damages	Pain & suffering: \$328 550 Economic loss: 3 X QOTE <sup>3</sup> (\$4 110) pw for each week of lost earnings

Table 10 - Access to Common Law as at 30 September 2013 continued

Jurisdiction	Access	Type of damages	Threshold	Damages
Western Australia	Yes — limited	Economic and non-economic loss	5% WPI <sup>1</sup>	\$434 160 (<25% WPI), no cap (min. >25% WPI)
South Australia	No	N/A	N/A	N/A
Tasmania	Yes — limited	Economic and non-economic loss	20% WPI <sup>1</sup>	Unlimited
Northern Territory	No	N/A	N/A	N/A
ACT Private*	Yes	Unlimited	Nil	Unlimited
C'wealth Comcare	Yes — limited	Damages for non-economic loss	Successful PI <sup>4</sup> claim	\$110 000
C'wealth Seacare	Yes — limited	Damages for non-economic loss	Successful PI <sup>4</sup> claim	\$138 571
C'wealth DVA	Yes — limited	Damages for non-economic loss	Successful PI <sup>4</sup> claim	\$110 000

\* as at 30 June 2013

1. Whole person impairment
2. Work-related impairment
3. Queensland ordinary time earnings
4. Permanent impairment

## Return to work

Return to work (RTW) refers to assisting injured workers in getting back to work. The aim of the RTW / rehabilitation provisions in legislation is to provide for the safe and durable RTW of the injured worker as early as possible.

Table 11 - Sections of the Act or Regulations referring to RTW as at September 2013

Jurisdiction	Sections of the Act or Regulations
<b>New South Wales</b>	<i>Workplace Injury Management Act 1998</i> : Chapter 3 <i>Workers' Compensation Regulation, 2010</i> : Part 6
<b>Victoria</b>	<i>Accident Compensation Act 1985</i> — Part VIIB (RTW) <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> : Part 4 (from 1 July 2014)
<b>Queensland</b>	<i>Workers' Compensation and Rehabilitation Act 2003</i> : s220, s221, s228 Reg s101 to 110
<b>Western Australia</b>	<i>Workers' Compensation Code of Practice (Injury Management) (2005)</i> : cl1 to 9 Act: s3; s5(1); s64; s65 s72B; s84AA(1); s84AB; Part IX; Part IXA
<b>South Australia</b>	<i>Workers Rehabilitation and Compensation Act 1986</i> : s26 to s28D
<b>Tasmania</b>	<i>Workers Rehabilitation and Compensation Act 1988</i> : Part XI
<b>Northern Territory</b>	Return to work and treatment program s75A and s75B Accredited Vocational Rehabilitation Providers s50
<b>ACT Private*</b>	<i>Workers Compensation Act 1951</i> : Chapter 5
<b>C'wealth Comcare</b>	<i>Safety, Rehabilitation and Compensation Act 1988</i> : s36 to s41A
<b>C'wealth Seacare</b>	<i>Seafarers Rehabilitation and Compensation Act 1992</i> : s48 to s52
<b>C'wealth DVA</b>	<i>Military Rehabilitation and Compensation Act 2004</i> : s37 to s64

\* as at 30 June 2013.

## Return to work: programs and policies

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

Table 12 - Requirement to have RTW / workplace rehabilitation program or policy as at September 2013

Jurisdiction	Employers required to have RTW program / policies?	Do requirements differ for different categories of employers?	Exemptions from RTW programs	Requirements for development of programs / policies (e.g. in consultation with workers)
New South Wales	Yes	Yes	Yes	Yes
Victoria	Yes	No	No	Yes
Queensland	Yes	Yes — high risk industries have a lower threshold to meet criteria for needing policies and procedures and a Rehabilitation and RTW Coordinator	Yes — No workplace rehabilitation policies or procedures needed in high risk industries with wages less than \$2.15 million. All other employers with wages less than \$7.05 million	No
Western Australia	Yes	No	No	No

	Yes — employers with 30 + employees	No	Yes — employers with <30 employees	Procedure must be signed off by person with authority to commit employer to procedure
<b>South Australia</b>	Yes	No	No	Yes
<b>Tasmania</b>	Not legislated	Not legislated	Not legislated	Not legislated
<b>Northern Territory</b>	Yes	No	No	Yes
<b>ACT Private*</b>	Yes	Yes	No	No
<b>C'wealth Comcare</b>	No	N/A	No	Yes
<b>C'wealth Seacare</b>	N/A	N/A	N/A	N/A

\* as at 30 June 2013.

## Return to work: Injured worker placement incentives

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

Table 13 - Injured worker placement incentives as at September 2013

Jurisdiction	Name of scheme	Funding for equipment used for workplace modifications	Training costs	Work trials
New South Wales	JobCover Placement	Yes — no limit	Yes — no limit	Yes — for up to 12 weeks
	Return to Work Assist	Yes — no limit	No	No
	Workplace Modifications	Yes — no limit	No	Can be linked to work trial
Victoria	WISE	Not part of WISE, but may be provided based on claim circumstances	Not part of WISE, but may be provided based on claim circumstances	No
Queensland	Host Placement run by WorkCover Qld	Case by case basis	Yes	6-8 week work trial
Western Australia	N/A	N/A	N/A	N/A
South Australia	RISE	Cost associated with minor site modifications, equipment	Considered under RTW plan	Considered under RTW plan
Tasmania	N/A	N/A	N/A	N/A
Northern Territory	Alternative Employer Incentive Scheme	Yes	Yes	12 week work trial
ACT Private*	Second Injury Scheme (private arrangement b/t insurers and employers)	Not expressly provided but can be negotiated	Not expressly provided but can be negotiated	Not expressly provided but can be negotiated
Comcare	N/A	N/A	N/A	N/A
Seacare	N/A	N/A	N/A	N/A
DVA	Vocational Rehabilitation Employer Incentives	Yes	Yes	Yes

\* as at 30 June 2013.

## Glossary

AWE	Average Weekly Earnings
AWOTEFA	Average Weekly Ordinary Time Earnings of Full-time Adults
MRCA	Military Rehabilitation and Compensation Act 2004
NWE	Normal Weekly Earnings
PI	Permanent Impairment
PIAWE	Pre-injury Average Weekly Earnings
QOTE	Queensland Ordinary Time Earnings
RTW	Return To Work
WISE	WorkCover Incentive Scheme for Employers (Vic.)
WPI	Whole Person Impairment
WRI	Work-related Impairment

## Sources

All information on workers' compensation arrangements in this booklet is derived from the following annual publications: *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2014* and the *Comparative Performance Monitoring Report 15th Edition*, published by Safe Work Australia.

More detailed information on workers' compensation generally and links to web pages related to each jurisdiction are available on the [Safe Work Australia website](#).

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