

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIA AND NEW ZEALAND

OCTOBER 2006



Australian Government

Australian Safety and Compensation Council

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FOREWORD

FOREWORD

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

This is the first time that the Australian Safety and Compensation Council has produced the Comparison, which has been reviewed with the format redesigned and the contents broadened in scope from earlier editions. The Comparison now aims to provide information for all stakeholders involved in workers' compensation, from subject matter experts to those new to the field, to help them understand arrangements in each of the workers' compensation schemes in Australia and New Zealand.

The Comparison provides a 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 Comparison is a companion to the Workplace Relations Ministers' Council's *Comparative Performance Monitoring Australian and New Zealand Occupational Health and Safety and Workers' Compensation Schemes* reports, which provide detailed information on the operations of the schemes each year, and examples of how aspects of scheme design are applied in practice.

The information contained in this edition of the Comparison is correct as at 1 October 2006. However, because each jurisdiction may vary their arrangements from time to time, and because there may be some exceptions to the arrangements described in this edition, readers wanting up-to-the-minute information should check with the relevant authority.

The Victorian WorkCover Authority previously produced this publication on behalf of the Heads of Workers' Compensation Authorities, and the Australian Safety and Compensation Council would like to acknowledge all of the work that the Victorian WorkCover Authority has put into the task since 1993, and must also thank the representatives from each of the jurisdictions for the valuable assistance they have provided to the Office of the Australian Safety and Compensation Council in producing this edition of the Comparison.

Mr Bill Scales, AO

Chairman of the ASCC

THE EVOLUTION OF WORKERS' COMPENSATION SCHEMES IN AUSTRALIA AND NEW ZEALAND

INTRODUCTION

This section provides an historical overview of the development of workers' compensation schemes in Australia at both the national and jurisdictional level, as well as New Zealand, and it serves to explain why Australia is faced with the complexity of workers' compensation arrangements that it has today.

In preparing this section, the following publications were used extensively: Kevin Purse *The Evolution of workers' compensation policy in Australia*, 2005, from the Health Sociology Review; the CCH *Workers' Compensation Guide, Volume 1*; and the Productivity Commission's *National Workers' Compensation and Occupational Health and Safety Frameworks* report of 2004.

THE NATIONAL PERSPECTIVE

In Australia, there are ten workers' compensation systems. Over time, each of the eight Australian States and Territories has developed their own workers' compensation laws. There are also two Commonwealth schemes: the first is for Australian Government employees and the employees of licensed authorities under the *Safety, Rehabilitation and Compensation Act 1988*, and the second is for certain seafarers.

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 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.

THE COMMONWEALTH

In 1912, the Commonwealth introduced the *Commonwealth Workmen's Compensation Act 1912* to provide compensation for Commonwealth workers, arising from the need for an 'equitable and regular procedure for compensation'. 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* 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 introduced compensation for illnesses and diseases, rather than an approach based on physical injuries set out in 'maims tables'.

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

VICTORIA

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:

> 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

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, and 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 removing the right of workers to make common law damages claims against their employers, and public underwriting of the scheme. 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.

SOUTH AUSTRALIA

South Australia's legislature first began with the *Workmen's Compensation Act 1900*, 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 upon 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. This was followed by the release of a Report of the Tripartite Committee on the Rehabilitation and Compensation of Persons Injured at Work in September 1980, entitled 'A Workers Rehabilitation and Compensation Board for South Australia – the key to rapid rehabilitation and equitable compensation for those injured at work' otherwise known as the '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 on workers compensation 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* 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 a concept of a no fault legislation such as the *Workers Rehabilitation and Compensation Act 1986*.

On 4 April 1995 the then Liberal Government introduced a *Workers Rehabilitation and Compensation (Miscellaneous Provisions) Amendment Bill 1995* for an Act to amend the *Workers Rehabilitation and Compensation Act 1986*. The following arrangements were included amongst its provisions:

- > The legislation repealed and replaced section 6 of the Act pertaining to territorial provisions whereby new arrangements made the Act apply only if a 'nexus' between a worker's employment and the State could be established.
- > Rehabilitation and return to work plans were introduced on 17 August 1995 for injured workers in receipt of income maintenance and who were likely to be incapacitated for more than 3 months and who had some prospect of returning to work. The insertion of s28A 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. Sections 28A, 28B, 28C came into effect as of 25 January 1996.
- > Further amendments to Section 30A were made, expanding coverage for psychiatric disabilities to cover all psychiatric disabilities, not just stress claims.
- > Provisions pertaining to the compensation for medical expenses under s32 were also expanded to allow for the regulation of treatment protocols and the establishment of a scale of charges. This came into effect on 25 January 1996.
- > Two year review processes under s35(2) were amended. Rather than income maintenance after two years taking into account of what a worker can earn in suitable employment, the onus was now 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.
- > Further, s58B employer obligations were relaxed so that small employers were only required to keep a position available for 1 year only and s43 sexual incapacity lump sums were eliminated.

WESTERN AUSTRALIA

Western Australia introduced the *Worker's 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 to the scheme, 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 the injury management focus of the workers' compensation scheme in Western Australia.

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 "affected 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.

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*.

A subsequent 1998 report by the Joint Select Committee of Inquiry into the Tasmanian Workers' Compensation System recommended significant changes to the benefits model and established the new WorkCover Tasmania Board in 2000.

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 current legislation – the *Work Health Act 1986*, which contains provisions for both occupational health and safety and workers' compensation. This Act provides for a scheme which is privately underwritten, features pension based benefits and promotes rehabilitation and an early return to work. There is no access to common law for injured workers.

AUSTRALIAN CAPITAL TERRITORY

In the Australian Capital Territory, the *Workmen's Compensation Ordinance 1951* was introduced in 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.

In 2002, further significant changes were made by the *Workers Compensation Amendment Act 2001* to focus on early reporting, early intervention and return to work, complemented by an improved benefits structure. 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 create a Default Insurance Fund (DIF), which superseded the previous Nominal Insurer and Supplementation Fund, and to allow certain categories of carers to be deemed as 'workers' under the Act.

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

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*, which increased the emphasis on injury prevention and rehabilitation.

COMPARISON OF WORKERS' COMPENSATION SCHEMES

This document discusses and compares the nature, operation and application of the *workers' compensation* (see Glossary) systems which operate in each of the ten Australian jurisdictions and New Zealand. The two Commonwealth schemes for workers covered by Comcare and for Seafarers are discussed together as 'Commonwealth'.

This section provides background information on the arrangements under which the workers' compensation schemes operate.

THE KEY AREAS FOR COMPARISON ARE:

- > scheme names
- > legislation
- > snapshot of scheme statistics
- > general statistics for each jurisdiction
- > types of scheme funding
- > self-insurance
- > coverage
- > benefits
- > pre-injury provisions
- > return to work provisions
- > uninsured employer provisions
- > dispute resolution
- > access to common law
- > cross-border provisions; and
- > recent developments

SCHEME NAMES

SCHEME NAMES

As at 1 October 2006, workers' compensation arrangements in each jurisdiction were principally administered by the authorities listed below.

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

Jurisdiction	Scheme
Commonwealth	<u>Comcare</u> <u>Seacare</u>
Victoria	<u>Victorian WorkCover Authority</u>
New South Wales	<u>WorkCover NSW</u>
South Australia	<u>WorkCover Corporation of South Australia</u>
Western Australia	<u>WorkCover Western Australia</u>
Queensland	<u>WorkCover Queensland</u>
Tasmania	<u>WorkCover Tasmania</u>
Northern Territory	<u>NT WorkSafe</u>
Australian Capital Territory	<u>ACT Private Sector Workers' Compensation Scheme</u>
New Zealand	<u>Accident Compensation Corporation</u>

LEGISLATION

As at 1 October 2006, workers' compensation schemes operated under separate laws in each jurisdiction, as shown below.

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

Jurisdiction	Legislation
Commonwealth	<u>Safety, Rehabilitation and Compensation Act 1988</u> <u>Seafarers Rehabilitation and Compensation Act 1992</u>
Victoria	<u>Accident Compensation Act 1985</u> <u>Accident Compensation (WorkCover Insurance) Act 1993</u>
New South Wales	<u>Workers Compensation Act 1987</u> <u>Workplace Injury Management and Workers Compensation Act 1998</u>
South Australia	<u>Workers Rehabilitation and Compensation Act 1986</u> <u>WorkCover Corporation Act 1994</u>
Western Australia	<u>Workers' Compensation and Injury Management Act 1981</u>
Queensland	<u>Workers' Compensation and Rehabilitation Act 2003</u>
Tasmania	<u>Workers Rehabilitation and Compensation Act 1988</u>
Northern Territory	<u>Work Health Act 1986</u>
Australian Capital Territory	<u>Workers Compensation Act 1951</u>
New Zealand	<u>Injury Prevention, Rehabilitation, and Compensation Act 2001</u>

TRANSITIONAL PROVISIONS

Not all injured workers are covered under current workers' compensation legislation because their *date of injury* (see Glossary) 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.

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

† No hyperlink provided as legislation has been repealed.

UNIQUE PROVISIONS

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* (see Glossary) for people who may have been affected by nuclear radiation from British atomic tests in Australia, in the 1950s.

Jurisdiction	Legislation
Commonwealth	Administrative Scheme (covers British nuclear tests participants who were not Commonwealth employees).
Victoria	Not applicable
New South Wales	Associated General Contractors Insurance Company Limited Act 1980 Bishopsgate Insurance Australia Limited Act 1983 The Standard Insurance Company Act 1963 Workers Compensation (Brucellosis) Act 1979 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 Workers Compensation (Dust Diseases) Act 1942 Workmen's Compensation (Lead Poisoning – Broken Hill) Act 1922 Workers Compensation Regulations 2003
South Australia	Not applicable
Western Australia	Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001 Employers' Indemnity Supplementation Fund Act 1980 Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986 Workers' Compensation and Injury Management Regulations 1982
Queensland	Motor Accident Insurance Act 1994 The Workers' Compensation (Lead Poisoning, Mount Isa) Acts 1933 to 1961†
Tasmania	Workers' (Occupational Diseases) Relief Fund Act 1954*†
Northern Territory	Not applicable
Australian Capital Territory	<i>The Workers Compensation Act 1951</i> purports to provide an exhaustive account of the rights of worker claimants in the Territory, including specific circumstances where an injured worker's claim for compensation is unable to be covered by his/her employer or insurer.
New Zealand	Tuberculosis Act 1948

* No new claims allowed

† No hyperlink provided as legislation has been repealed

WORKERS' COMPENSATION STATISTICAL SNAPSHOT

This section provides broad statistical information about workers' compensation schemes throughout Australia and New Zealand, which is important to any discussion and comparison of workers' compensation arrangements.

TOPICS DISCUSSED IN THIS SECTION ARE:

- > statistics specific to workers' compensation schemes
- > the operation of the schemes in each jurisdiction; and
- > the number of claims brought in each jurisdiction and their success rate.

Information on jurisdiction performance can be found in the Comparative Performance Monitoring report (www.workplace.gov.au/cpm).

EMPLOYMENT

For the financial year 2005-06, the number of employed persons in Australia was approximately 10 million. The table below contains estimates of the number of employed persons by state and territory.

Employed persons by jurisdiction ('000), June 2006									
AUST	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
10 042.08	2488.2	3255.6	741.6	1056.8	1998.5	222.4	97.3	181.6	2096.0

Source: ABS Labour Force, Catalogue No. 6202, Table 12 – average of four quarters in 2005-06

However, workers are not necessarily covered by the workers' compensation legislation of the jurisdiction in which they work, as some will be covered by Commonwealth legislation. This is particularly apparent in the Australian Capital Territory where Commonwealth employees and the ACT Public Sector employees are both covered by the Commonwealth's Comcare scheme. The table below shows the number of employed persons by workers' compensation jurisdiction.

It should be noted that only those workers classed as *employees* (see Glossary) or workers under each jurisdiction's legislation are covered for workers' compensation. The table below provides estimates of the number of employees covered by workers' compensation and the proportion of all workers covered by workers' compensation. Where an employee has more than one job, that employee is counted more than once as they would be covered by workers' compensation policies with each employer. Therefore the percentages reported could slightly overstate the true extent of workers.

Employed persons and employees by jurisdiction, June 2006											
JURISDICTION	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	AUST	NZ
EMPLOYED PERSONS ('000)^a	285.0	2428.2	3191.8	725.8	1040.6	1966.0	216.2	93.8	94.6 ^c	10042.0	2096.0
EMPLOYEES COVERED BY WORKERS' COMPENSATION ('000)^b	285.0	2249.3	2863.7	659.0	918.9	1617.2	193.1	89.5	96.9 ^c	8972.6	2096.0
PROPORTION OF EMPLOYED PERSONS COVERED BY WORKERS' COMPENSATION	100%	93%	90%	91%	88%	82%	89%	95%	100% ^d	89%	100%

a. Source: ABS Labour Force, Catalogue No. 6202, Table 12 – average of four quarters in 2005-06, adjusted for Commonwealth employment using ABS Wage and Salary Earners, Catalogue No. 6248.0 unpublished data.

b. Includes Seacare employees under Commonwealth.

c. These figures have inherent inaccuracies due to the comparatively high standard errors in the estimates involved. The proportion of employed person covered by workers' compensation has been recorded at 100% but this most likely overstates the true proportion.

d. 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.

SUBMITTED WORKERS' COMPENSATION CLAIMS

The table below gives an indication of the number of submitted workers' compensation claims in each jurisdiction in the period 1 July 2005 to 30 June 2006.

The figures below are to give the reader an indication of the number of claims in each scheme each year and are subject to variation because of the effect of some claims being lodged in the year following the injury.

Number of submitted claims (2005-06)										
JURISDICTION	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
NUMBER OF CLAIMS	11281		44156 ^a	37441 ^b	40853	87041	10018	3552	4006	294984

a. Note this is a figure for 'major' claims and is subject to change

b. Claims reported for financial year ending June 2006 by both registered and self-insured employers

More comparable information, such as incidence rates, can be found in the Comparative Performance Monitoring report (www.workplace.gov.au/cpm).

SCHEME FUNDING

All workers' compensation schemes collect funds to meet liabilities and administer the scheme and there are three different types of scheme funding, which are central, hybrid and competitive.

In *centrally funded schemes* (see Glossary), 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* (see Glossary) 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 relevant jurisdictional authorities.

Privately underwritten schemes (see Glossary) are the opposite of central 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.

The table below shows which models operate in each jurisdiction (as at 1 October 2006).

Type of Scheme	Jurisdiction
Centrally funded	Commonwealth (Comcare) Queensland New Zealand
Hybrid	New South Wales Victoria South Australia
Privately Underwritten	Commonwealth (Seacare) Western Australia Tasmania Northern Territory Australian Capital Territory

NET FUNDING RATIOS

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

NET ASSETS

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

NET LIABILITIES

Net liabilities in centrally funded schemes are the total current and non-current liabilities of the scheme; minus any amounts the scheme expects to retrieve at the end of the financial year. 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.

The graph below will show each jurisdiction's scheme funding position as reported in their annual reports.

Jurisdiction	Scheme's funding position	
	30 June 2006	30 June 2005
Commonwealth	Assets: \$1,093m Liabilities: \$958m ^a Funding Ratio: 114.2% ^a	Assets: \$1,002m Liabilities: \$858m ^a Funding Ratio: 116.8%
Victoria	Assets: \$9,377m Liabilities: \$7,897m Funding Ratio: 118.7%	Assets: \$8,907m Liabilities: \$8,007m Funding Ratio: 111%
New South Wales	Assets: \$10,707m Liabilities: \$10,621m Funding Ratio: 100.8%	Assets: \$8,186m Liabilities: \$10,185m Funding Ratio: 80.4%
South Australia	Assets: \$1,288 m Liabilities: \$1,982 m Funding Ratio: 65.0%	Assets: \$1,120m Liabilities: \$1,766m Funding Ratio: 63.4%
Western Australia	Assets: \$1,326m Liabilities: \$1,217m Funding Ratio: 109%	Assets: \$1,361m Liabilities: \$1,146m Funding Ratio: 118.8%
Queensland	Assets: \$3,169m Liabilities: \$1,777m Funding Ratio: 178.3%	Assets: \$2,879m Liabilities: \$2,160m Funding Ratio: 133.3%
Tasmania	Assets: \$218.0m ^b Liabilities: \$165.9m ^c Funding Ratio: 131.4%	Assets: \$236.5m ^d Liabilities: \$189.0m ^e Funding Ratio: 125.1%
Northern Territory	N/A	N/A
Australian Capital Territory	N/A	N/A
New Zealand	(NZ\$) Assets: \$2,016m Liabilities: \$1,258m Funding Ratio: 160%	(NZ\$) Assets: \$1,559m Liabilities: \$1,151m Funding Ratio: 135%

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

b. Includes insurer/self insurer case estimates as at 31 December 2006 plus Incurred But Not Reported (IBNR) / Incurred But Not Enough Reported (IBNER) held reserves as at 30 June 2006.

c. Actuarial central estimate as at 31 December 2006.

d. Includes insurer/self insurer case estimates as at 31 December 2005 plus IBNR/IBNER held reserves as at 30 June 2005.

e. Actuarial central estimate as at 31 December 2005.

Care should be taken when analysing the information above as the valuation of liabilities differs across jurisdictions. The Comparative Performance Monitoring report (www.workplace.gov.au/cpm), attempts to address most of the areas where differences can occur.

PREMIUMS

Employers, other than self-insurers, are required to pay workers' compensation *premiums* (see Glossary) 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.

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 2004-05 the Australian standardised average premium rate was 2.25 per cent of payroll.

The table below shows the average published premium in each jurisdiction. Caution should be taken when comparing these rates as they involve different definitions of remuneration, employer excess periods and levels of coverage. The Comparative Performance Monitoring report (www.workplace.gov.au/cpm), attempts to address these issues to provide comparable premium rates.

Average premium rate per financial year (as at 1 October 2006)													
JURISDICTION	06-07:	05-06:	04-05:	03-04:	02-03:	01-02:	00-01:	99-00:	98-99:	97-98:	96-97:	95-96:	NOTES
CTH: COMCARE	1.77%	1.77%	1.67%	1.43%	1.13%	1.00%	0.98%	1.03%	1.00%	1.20%	1.60%	1.70%	
CTH: COMCARE (ACT GOV)	3.03%	3.08%	3.07%	3.13%	3.07%	3.36%	3.12%	2.77%	2.60%	3.00%	5.00%	5.20%	
CTH: SEACARE				5.19%	5.17%	3.75%	4.12%	3.48%					
VIC	1.62%	1.80%	1.99%	2.22%	2.22%	2.22%	2.22%	1.90%	1.90%	1.80%	1.80%	1.98%	
NSW	2.17%	2.57% / 2.44% ^{a, b}	2.57%	2.57% ¹	2.80% ¹	2.80% ¹	2.80% ¹	2.80%	2.80%	2.80%	2.80%	2.50%	^a Excludes New Tax System effects ^b WCA target premium rate reduced to 2.44% for policies renewing after 31 December 2005.
SA	3.00%	3.00%	3.00%	3.00%	2.46%	2.46%	2.86%	2.86%	2.86%	2.86%	2.86%	2.86%	
WA	2.12%	2.32%	2.25%	2.34%	2.47%	2.63%	2.97%	3.09% ^a	2.54%	2.40%	2.67%	2.61%	^a 3.44% between 1/7/99 and 31/10/99 3.09% between 1/11/99 and 30/6/00
QLD	1.20%	1.43%	1.55% [*]	1.55%	1.55%	1.55% ^d	1.75%	1.85% ^c	2.145%	2.145% ^a	2.023%	1.85% ^b	[*] wage base now includes superannuation ^a self insurance commenced 1997-98. From then this data represents all claims, including those less than 5 days, and includes self insurer claims ^b 10% surcharge introduced 01/01/96 ^c surcharges removed for periods of insurance after 1/7/99 ^d excludes GST NB: all rates are inclusive of stamp duty
TAS	1.92%	2.19%	2.46%	2.78%	3.12%	3.16%	3.14%	3.11%	2.7%	3.1%	3.2%	3.02%	NB: These are actual rates not published rates
NT	Not available until 2007	2.70%	2.95%	3.06%	3.22%	3.10%	2.91%	2.33%	1.90%	1.53%	1.50%	1.60%	NB: Figures supplied by approved insurers
ACT	Not available	3.32%	3.58%	3.53%	3.58%	3.07%	2.53%	2.59%	2.59%	2.59%	2.50%	2.41%	NB: There is no stamp duty payable on workers' compensation premiums and the premium percentage are not standardised as per the Comparative Performance Monitoring (CPM) reporting process.
NZ	0.86% [*]	3.00%	3.00%	3.00%	2.46%	2.46%	2.86%	2.86%	2.86%	2.86%	2.86%	2.86%	[*] - this is an average, - does not include the residual levy for work claims pre-1999 - does not include Goods and Services tax

INDUSTRY RATES

Premiums vary from industry to industry. The following table provides an indication of some selected premium rates

PERCENTAGE (AS AT 1 JULY 2006)							
INDUSTRY	VIC	NSW	SA	WA	QLD	TAS	NZ
Average levy/premium rate	1.62%	2.17%	3.00%	2.12%	1.20%	2.32	0.86
Highest (published) rate	11.393%	13.869%	7.5%	11.11%	5.958%	9.62	6.47
Highest (experienced rate) rate	N/A	N/A	11.25%	N/A	11.916%	N/A	N/A
Lowest (published) rate	0.31%	0.27%	0.40%	0.40%	0.133%	0.50	0.08
Lowest (experienced rate) rate	N/A	N/A	0.28%	N/A	0.020%	N/A	N/A
House construction	2.264%	6.363%	3.2%	1.81%	2.246%	4.38	2.80
Non-residential construction	2.891%	4.959%	3.5 %	3.09%	2.246%	4.38	2.80
Meat products	11.393%	9.081% (Abattoirs); 9.207% (Meat packing and freezing); 8.109% (Meat processing)	7.5%	8.07% (Meat processing)	5.404% (Meat processing)	9.62	5.66
Rubber products manufacturing	2.387% – 4.402%	7.587% (Rubber tyre manufacturing); nec 5.166% (Other rubber product manufacturing)	7.5%	3.26%	2.730%	1.65	1.58
Plastic products	3.994%	4.536% (Plastic product manufacturing)	6.1%	3.73% (Plastic blow moulded product manufacturing)	1.940%	3.54	1.19
Basic iron and steel products	3.999%	5.274% (Basic iron and steel manufacturing)	7.5 %	4.74%	2.358%	3.54	1.88
Steel casting	4.395%	5.211% (Iron & steel casting & forging)	7.5%	4.33% (Iron and steel casting and forging)	2.358% (Iron and steel casting and forging)	3.54	3.05
Steel pipes and tubes	4.394%	5.220% (Steel pipes and tubes manufacturing)	4.7%	3.86%	2.358%	3.54	1.88
Pulp paper and paperboard	2.164%	3.780% (Pulp paper and paperboard manufacturing)	5.2%	5.44%	1.940%	1.65	1.13
Paints	2.906%	3.357% (Paint manufacturing)	3.4%	2.20%	1.521% (Paint manufacturing)	1.86	0.61
Soap and detergents	3.401%	3.348% (Soap and other detergent manufacturing)	2.5%	1.69%	1.448%	1.86%	0.62%
Glass and glass products	2.992%	5.004% (Glass and glass products manufacturing)	4.9%	5.98%	2.037%	3.96%	0.94%
Cement	1.751%	3.600% (Cement and lime manufacturing)	4.7%	6.02%	1.676% (Cement and lime manufacturing)	2.28%	1.79%

PERCENTAGE (AS AT 1 JULY 2006)							
INDUSTRY	VIC	NSW	SA	WA	QLD	TAS	NZ
Clothing manufacturing	2.927% - 4.292%	4.554%	3.6%	4.10%	1.134%	2.07%	0.74%
Beer	1.982%	3.357% (Beer and malt manufacturing)	3.0%	2.31%	1.379%	2.49%	0.60%
Hotels	1.825%	3.375%	3.0%	2.09% (Pubs, taverns and bars)	1.250%	1.86%	0.78%
Bread manufacturing	4.544%	4.194%	7.5%	4.85%	2.358%	2.91%	0.70%
Footwear manufacturing	6.907%	4.725%	4.9%	3.67%	1.134%	2.07%	0.87%
Nursing homes	3.776%	5.967%	7.5%	4.39%	2.037%	3.54%	1.36%
Department stores	2.832%	2.304%	2.5%	2.70%	1.029%	1.76%	0.41%
Medical practice	0.453%	0.675% (General practice medical services); 0.666% (Specialist medical services)	0.60%	0.41% (General practice medical services)	0.186% (General practice medical service)	0.71%	0.08%
Secondary schools – Private	0.743%	0.855% (Secondary education)	1.3%	0.94% (No distinction is made between private and government schools)	0.407%	2.59%	0.19%
Secondary schools – Government	1.298%	0.855% (Secondary education)	1.3%	0.94%	0.407%	2.59%	0.19%

* Apart from Western Australia and Tasmania (ie NT/ACT), Industry Rates are not provided for jurisdictions with full private insurance underwriting.

VIC - 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.

NSW - Average levy/premium rate excludes GST and additional costs arising from The New Tax System.

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

WA - All published and premium rates are exclusive of GST.

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

NZ - No distinction is made between private and government schooling

- Experience rating not available in New Zealand.

- All rates are GST exclusive

- For certain employers, discounts may be applied to the published rates, to reflect good safety management practice.

- Year-to-year comparison of aggregate rates is limited, for the following reasons:

- Rate calculations changed from a "pay-as-you-go" basis to a fully-funded basis from 1998/99;

- The given levies were also applied to the self-employed before 1999/2000; whereas the self-employed were treated separately from 1999/2000.

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

PREMIUM SETTING: NOTES TO THE INDUSTRY RATES COMPARISON TABLE

1. It is difficult to make exact comparisons between states, as such 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 NSW 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 SA 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 were published in an Industrial Gazette notice on 1 July 2004
- > On 30 June 2001, NSW introduced an industry classification system based on the ANZSIC system (WorkCover Industry Classification – WIC), with some alterations specifically designed for NSW. All WIC rates were reduced by 5% on 31/12/05 and were further reduced by 10% on 30/06/06. Current industry classes and rates were published in a NSW Gazette notice on 24 May 2006. Refer to the Insurance Premiums order on WorkCover NSW's website, www.workcover.nsw.gov.au
 - > 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: 48 self-insurers, 18 group self-insurers, 6 specialised (or industry specific) insurers and separate arrangements covering most public sector employers
- > South Australia: 69 self-insurers plus most of the South Australian Public Sector and Government instrumentalities
- > Victoria: 39 self-insurers
- > Queensland: 26 self-insurers; and
- > Western Australia: 28 self-insurers. Self insurers are not part of the premium setting process in WA

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 occupational health and safety loading on assessed premium is applicable in South Australia
- > Jurisdictions vary in their application of GST to premiums. NSW's published industry rates include 10% GST. Other jurisdictions generally exclude GST from their published industry premium rates

2. 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% of levy (See Glossary) and a penalty of up to 50% 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%, and with the WorkCover WA Authority's (Board) approval can be surcharged in excess of 75%. 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.

CALCULATION OF INDUSTRY RATES

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.

New South Wales

In 2005-2006 and 2006-2007, NSW 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 credibility model is applied to small industry classes.

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% and 7.5%, 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.

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

Queensland

The industry rates are published in an Industrial Gazette as WorkCover Industry Classification (WIC) Rates. These rates are actuarially calculated taking the industry aggregate claims performance into account, and also include a provision for outstanding claims liabilities. The average rate paid by all employers in a particular industry is used as a base rate for new employers.

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 550 industry groups and 129 premium pools. For each industry group, the premium 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' experiences for a new industry group, the volume of claims, and so on.) the industry group will either stay within the same premium pool or be moved up or down a pool.

The premium relativity of each premium pool is the expected ultimate cost of claims expressed as a percentage of wages for the premium pool, compared with the expected ultimate cost of claims as a percentage of wages for all premium pools.

The absolute level of the premium rates is set so that the expected costs of the Scheme will be met.

The premium rates shown are the fully-funded premium rates.

SELF-INSURANCE

All workers' compensation jurisdictions in Australia and New Zealand, except for Seacare, allow employers to self-insure in certain circumstances. In order to be approved as a *self-insurer* (see Glossary), employers have to meet strict criteria relating to *prudential requirements* (see Glossary), occupational health and safety, claims management and return to work standards.

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. 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 table below illustrates the number of self-insurers in each jurisdiction and what proportion of workers within the jurisdiction are covered for workers' compensation under self-insuring employers.

Employers using self-insurance arrangements (as at 1 October 2006)										
JURISDICTION	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
NO. OF EMPLOYERS ³	12	Not available	66, plus 6 specialised insurer	225	28	282	17	6	9	167
% OF EMPLOYERS	7%	Not available	Not available	0.35% of employers are covered by self insurance but the percentage of workers under self insurers is estimated to be 36.5%	Not available	0.15%	Not available	4.25%	0.07%	0.048%

3 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.

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. At as 1 October 2006, 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.

The table below shows the legislative requirements which must be satisfied in each jurisdiction before an employer can self-insure.

Requirements to be satisfied by employers (as at 1 October 2006)		
JURISDICTION	PRUDENTIAL REQUIREMENTS	NUMBER OF WORKERS
Commonwealth	Comcare: Part VIII	500 or more (SRC Commission requirement)
	Seacare: No	Non applicable
Victoria	Yes: – Part V	No reference
New South Wales	Yes: – Part 7, Div 5	500 NSW workers or more
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.
Western Australia	Yes: – s164 & s165	No reference
Queensland	Yes: – s71	2000 full-time workers for new applicants
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
New Zealand	Yes: – s185	No reference

COVERAGE

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. Determining whether a person is covered by workers' compensation depends on the definitions of:

- > remuneration
- > workers
- > deemed workers
- > injury; and
- > workplace

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

DEFINITION OF REMUNERATION FOR THE PURPOSE OF PREMIUMS

Remuneration (see Glossary) 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'.

Jurisdiction	Definition of remuneration (as at 1 October 2006)
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>
Victoria	Gross wages, salaries (including overtime and loadings), bonuses, commission, fringe benefits and superannuation. The Remuneration Checklist outlines payments further.
New South Wales	Total gross earnings (before tax) and some other payments as outlined in the Wages Definition Manual.
South Australia	Payments made to or for the benefit of a worker (quantified in monetary terms). The guideline Remuneration Inclusions/Exclusions identifies what is included as remuneration.
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.
Queensland	Total amount paid, or provided by, an employer to, or on account of, a worker as wages, salary or other earnings by way of money or entitlements having monetary value, but does not include allowances payable in relation to any travelling, car, removal, meal, education, living in the country or away from home, entertainment, clothing, tools and vehicle expenses; and superannuation contributions, for deciding the amount of compensation payable to a worker under Chapter 3 ; and lump sum payments on termination of a worker's services for superannuation, accrued holidays, long service leave or any other purpose; and an amount payable by way of the employer's liability for the excess period.
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, but generally taken to include 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 AIMS Insurers' Data Dictionary (May 2002) Edition) for a more complete definition of wages at pages 14 and 22).
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>Earning 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>

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.

Employers' excess (as at 1 October 2006)				
JURISDICTION	EXCESS	DAYS OF INCAPACITY	COST OF BENEFITS	BUY OUT OPTION
Commonwealth	No	-	-	-
Victoria	Yes: – s125A(3)	First 10 days	First \$531 of medical costs	Yes – 12.5% if premium for policy commencing 1/7/06
New South Wales	Yes: – s160	Excess is first week's weekly compensation	-	-
South Australia	Yes: – s46	First 14 days per worker per calendar year – also required to pay for transportation for initial treatment	-	Yes – first 2 weeks by paying extra percentage of the levy rate (8% in 2003–04)
Western Australia	No	-	-	-
Queensland	Yes: – s65	First day of injury	First \$500	Yes – 5% of employer's premium or \$10
Tasmania	Yes: – s97(1A)	First weekly payment	First \$200 of other benefits	-
Northern Territory	Yes: – s56	Employer has to pay first day	-	-
Australian Capital Territory	No	Not prescribed under legislation but may be negotiated between employer and insurer		
New Zealand	Yes: – s98	Employer has to pay for the first week		

DEFINITION OF WORKER

To be eligible for compensation a person injured in the workplace must fall within the definition of *worker* (see Glossary) 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’.

Jurisdiction	Definition of worker (as at 1 October 2006)
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, or by a licensed corporation.</p> <p>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>
Victoria	<p>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</p> <p>b) a person who is deemed to be working under a contract of service</p> <p>c) a person deemed to be a worker</p> <p>d) a school pupil undertaking work experience or workplace training,</p> <p>e) a TAFE student undertaking practical placement: – s5(1)</p>
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)</p>
South Australia	<p>a) a person by whom work is done under a contract of service (whether or not as a worker)</p> <p>b) a person who is a volunteer: – s103A</p> <p>c) a self-employed worker: – s3(1); and</p> <p>d) and includes a former worker and the legal personal representative of a deceased worker</p>
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> <p>a) any person to whose service any industrial award or industrial agreement applies; and</p> <p>b) any person engaged by another person to work for the purpose of the other person’s trade or business under a contract with him for service, the remuneration by whatever means of the person so working being in substance for his personal manual labour or services: – s5(1)</p>

Jurisdiction (continued)	Definition of worker (as at 1 October 2006) (continued)
Queensland	<p>A worker is an individual who works under a contract of service. <u>Schedule 2</u> 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> (Cwlth).</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 > The person is, or would be, liable for the cost of rectifying any defect in the work performed
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 expressed or implied, or is oral or in writing; and > any person or class taken to be a worker for the purposes of the Act: – <u>s3(1)</u>
Northern Territory	<p>Contract or agreement of any kind to perform work or a service.</p> <p>Exclusions apply for people who supply an ABN: – <u>s3</u></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: – <u>s8(1)</u></p> <p>The Act devotes an entire chapter (<u>Chapter 3</u>) 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>
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 <u>s(6)</u> (also includes employees on unpaid parental leave, 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>

DEFINITIONS OF DEEMED WORKERS

A *deemed worker* (see Glossary) 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 definitions of 'workers' to ensure that workers under these arrangements are properly covered by workers' compensation.

The table below provides the definition of deemed worker in each jurisdiction.

Jurisdiction	Definition of deemed worker (as at 1 October 2006)
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>
Victoria	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> (i) Contractors: – s8 (ii) Subcontractors: – s9 (iii) Subcontractors and their workers: – s10 (iv) Sharefarmers: – s11 (v) Persons engaged at places of pick-up for the purposes of being selected for work (e.g. fruit pickers): – s15 (vi) Timber contractors: – s6(1) (vii) Drivers of passenger vehicles: – s7 (viii) Jockeys and track riders: – s16(4) (ix) Sailors: – s81(2) (x) Workers participating in deemed training programs: – s5(4A) - s(4E) (xi) Other types of deemed workers: – s5

Jurisdiction (continued)	Definition of deemed worker (as at 1 October 2006) (continued)
New South Wales	<p>Schedule 1 of the 1998 Act lists the nineteen specific circumstances in which persons are deemed to be workers:</p> <ul style="list-style-type: none"> (i) Workers lent or on hire (ii) Outworkers (iii) Other contractors (iv) Contractors with labour hire services arrangements (v) Rural work (vi) Timbergetters (vii) Salespersons, canvassers, collectors and others (viii) Tributers (ix) Mine workers (x) Mine rescue personnel (xi) Jockeys and harness racing drivers (xii) Drivers of hire-vehicles or hire-vessels –contract of bailment (xiii) Caddies and others employed through club (xiv) Shearers' cooks and others (xv) Fire fighters in fire district (xvi) Workers at place of pick-up (xvii) Boxers, wrestlers, referees and entertainers (xviii) Voluntary ambulance workers (xix) Ministers of religion (xx) Ministers of religion covered by policies (xxi) Participants in training programs
South Australia	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> (i) Worker performing prescribed work or work of a prescribed class for another: – <u>s3(1)(b)</u> – see definition of “contract of service”. The following are deemed workers under the Act: <ul style="list-style-type: none"> > Building work other than wall or floor tiling > Cleaning work > Driving to transport goods or materials > Taxi or hire car work > Performing or entertaining (ii) Self-employed workers: – <u>s103</u> (iii) Voluntary workers: – <u>s103A</u> (iv) Contractors and specified classes of workers: – <u>s3(6)</u> and <u>Reg 4-5</u>

Jurisdiction (continued)	Definition of deemed worker (as at 1 October 2006) (continued)
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: – <u>s5(1)</u> (ii) Contract in substance for personal manual labour or service: – <u>s5(1)</u> (iii) Principal contractors and sub-contractors: – <u>s175</u> (iv) Workers under an industrial award or agreement: – <u>s5(1)</u> (v) Deceased worker: – <u>s5(1)</u> (vi) Police officer: – <u>s5(1)</u> (Who suffers an injury and dies as a result of that injury) (vii) Clergy: – <u>s8</u> (viii) Jockey: – <u>s11A</u> (ix) Crown workers: – <u>s14(2)</u> (x) Certain persons deemed workers: – <u>s175AA</u> (xi) Working directors: – <u>s10A</u>
Queensland	<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 on hire (including labour hire firms and holding companies): – <u>Schedule 2 (1.6)</u> (ii) Sharefarmers: – <u>Schedule 2 (1.3)</u> (iii) Salespersons: – <u>Schedule 2 (1.4)</u> (iv) Labour workers: – <u>Schedule 2 (1.1)</u> (v) Contractors and workers of contractors: – <u>Schedule 2 (1.5)</u>
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: – <u>s4B</u> (ii) Services of workers lent or on hire: – <u>s4A</u> (iii) Police officer and police volunteers: – <u>s6A</u> (iv) Fire-fighting operations and fire prevention operations: – <u>s5</u> (v) Ambulance services and prescribed volunteers: – <u>s6</u> (vi) Port and harbour persons engaged at places of pickup: – <u>s25(4)</u> (vii) Salespersons: – <u>s4C</u> (viii) Taxi drivers: – <u>s3(2)</u> (ix) Specified clergymen: – <u>s3(4)</u> (x) Participants in training programs: – <u>s4D</u> (xi) Prescribed relationship (many persons and classes of persons are prescribed under other Acts): – <u>s4E</u> (xii) Prescribed classes of volunteers (none are prescribed for the purpose of 6B): – <u>s6B</u> (xiii) Principal contractors and sub-contractors: – <u>s29</u>

Jurisdiction (continued)	Definition of deemed worker (as at 1 October 2006) (continued)
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: – 3(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
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
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>

DEFINITION OF INJURY

Workers' compensation schemes generally provide that a worker is entitled to workers' compensation if they have suffered an *injury* (see Glossary) 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 | > disease | > retirement |
| > contribution of employment | > industrial deafness | > exclusions; and |
| > aggravation and acceleration | > work | > 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

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.

Jurisdiction	Definition of injury and relationship to employment (as at 1 October 2006)
Commonwealth	"...a physical or mental injury <i>arising out of, or in the course of</i> , the employee's employment...": – <u>s6 Comcare</u> , <u>s3 Seacare</u>
Victoria	"...an injury <i>arising out of, or in the course of</i> any employment...": – <u>s82(1)</u>
New South Wales	"...personal injury <i>arising out of, or in the course of</i> employment...": – s4 (1998 Act)
South Australia	"...disability <i>arises out of, or in the course of</i> employment...": – <u>s30</u>
Western Australia	"...a personal injury by accident <i>arising out of or in the course of</i> the employment...": – <u>s5</u>
Queensland	"...a personal injury <i>arising out of, or in the course of</i> , employment...": – <u>s32(1)</u>
Tasmania	"An injury, or a disease, <i>arising out of, and in the course of</i> employment": – <u>s25</u>
Northern Territory	"...a physical or mental injury . . . <i>out of or in the course of</i> employment...": – <u>s3 & s4</u>
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> ...": – <u>s4 & s31</u>
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: – <u>s28(1a) IPRC Act</u>

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.

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

Jurisdiction	Contribution of employment (as at 1 October 2006)
Commonwealth	To a material degree (for diseases only): – s4 Comcare , s10(1) Seacare
Victoria	Compensation is not payable in respect of the following injuries unless the worker's employment was a <i>significant contributing</i> factor to the injury – <ol style="list-style-type: none"> a heart attack or stroke injury; a disease contracted by a worker in the course of employment (whether at, or away from, the place of employment); a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease: – s82(2B) & s82(2C)
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)
South Australia	A substantial cause (for psychiatric disabilities only): – s30A(a)
Western Australia	To a significant degree (for diseases only): – s5
Queensland	A significant contributing factor: – s32(1)
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)
New Zealand	Not required, except for work-related gradual process, disease, or infection suffered by the person: – s20(2)(e)

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.

The table below illustrates in which jurisdictions aggravation or acceleration of injuries is covered by workers' compensation.

Is aggravation or acceleration of an injury covered by workers' compensation (as at 1 October 2006)										
JURISDICTION	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
COVERAGE	Yes									

DISEASES

Diseases (see Glossary) 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. The table below shows which schemes provide coverage for diseases under workers' compensation.

Are diseases covered by workers' compensation (as at 1 October 2006)										
JURISDICTION	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
COVERAGE	Yes									

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 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. The table below illustrates the industrial deafness provisions in each jurisdiction.

Jurisdiction	Industrial deafness provisions (as at 1 October 2006)
Commonwealth	Comcare: binaural hearing loss of 5%: – s24(7A) Seacare: 10% hearing loss: – s39(7)
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
New South Wales	6% total hearing loss: – s69A (1987 Act)
South Australia	Hearing loss exceeds 5%: – Schedule 3
Western Australia	At least 10% hearing loss for first election: – s24A Further 5% for subsequent elections: – s24A
Queensland	Not for the first 5%: – s125
Tasmania	5% binaural hearing impairment: – s73(7)
Northern Territory	Impairments no less than 5%: – s70
Australian Capital Territory	6% hearing loss (boilermakers deafness or similar deafness): – s64(1)
New Zealand	No threshold in legislation.

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 is variation 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

The table below outlines how each jurisdiction defines the concept of work.

Do the following constitute work (as at 1 October 2006)				
JURISDICTION	JOURNEYS TO AND FROM WORK	WORK RELATED TRAVEL	BREAKS – ONSITE	BREAKS – OFFSITE
Commonwealth	Comcare: Yes, some restrictions: – s6(b)	Yes: – s6(b)	Yes: – s6(b)	Yes: – s6(b)
	Seacare: Yes: – s9(2)(e)	Yes: – s9(2)(e)	No	No
Victoria	No: – s83	Yes, some restrictions: – s83	Yes: – s83	Yes: – s83
New South Wales	Yes, some restrictions: – s10 (1987 Act)	Yes: – s10 (1987 Act)	Yes: – s11	Yes: – s11
South Australia	Generally no. Only in very limited circumstances may be covered - most journey accidents would not be covered: – s30	Yes: – s30	Yes: – if the break is authorised: – s30(3)	No
Western Australia	No: – s19(2)	Yes: – s19(1)	Yes	Yes
Queensland	Yes, some restrictions: – s35	Yes: – s34	Yes: – s34(1)(c)	Yes: – s34(1)(c)
Tasmania	No, some exceptions: – s25(6)	Yes: – s25(6)	Yes: – s25(6)	No, some conditions: – 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
New Zealand	Generally no. Only in limited circumstances may be covered - most journey accidents would not be covered under workers compensation cover, although would be covered under ACC scheme: – s28(1)(b)	Yes: – s28(1)(b)	Yes: – s28(1)(b)	Yes, some restrictions.

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 become available, there is a commensurate decrease in compensation payments. The table below outlines each jurisdiction's retirement provisions.

Jurisdiction	Retirement provisions (as at 1 October 2006)
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>
Victoria	<p>If injured within the period of 130 weeks before attaining retirement age or after attaining: – the worker is entitled to weekly payments for no more than the first 130 weeks of incapacity for work: – s93E</p> <p>Worker not entitled to weekly compensation payments after attaining retirement age (s93F) except for limited period of up to 13 weeks if they meet specific circumstances if incapacity post retirement age relating to an injury suffered 10 years preceding and incapacity due to inpatient treatment: – s93EA</p>
New South Wales	<p>If injury occurs before retiring age: – weekly compensation made until first anniversary of the date on which worker reaches retirement age. If the injury occurs on or after retirement age: – weekly payments made for the first 12 months of injury. Eligibility for medical benefits is ongoing, regardless of age: – s52</p>
South Australia	<p>Weekly compensation payments are not payable after the worker reaches retirement age, which is defined as the lesser of either the age of 65 years, or if there is a normal retirement age for workers in employment of the kind from which the worker's disability arose, that age of retirement: – s35(5). However, workers injured within 6 months of retirement age or above retirement age that become incapacitated for work are entitled to weekly payments for a period of 6 months. Entitlements to weekly payments cease entirely at age 70: – s35(5a)</p>
Western Australia	<p>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</p>
Queensland	<p>No retirement provision referred to in the Act.</p>
Tasmania	<p>If injury occurs on or before 64, compensation ceases at 65. If injury occurs after 64, one year after injury occurs. The Tribunal may allow payments to continue where the worker would have continued to work beyond age 65: – s87</p>
Northern Territory	<p>Compensation equal to 75% loss of earning capacity or 150% Average Weekly Earnings (whichever is the lesser) until injured worker attains the 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</p>
Australian Capital Territory	<p>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(3)</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 <p>After that 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</p>

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.

The table below shows the exclusionary provisions in each jurisdiction.

Jurisdiction	Exclusionary provisions (as at 1 October 2006)
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 as 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 employment: – s4 > 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 but is not intentionally self-inflicted, unless the injury results in death, or serious and permanent impairment: – s14(2) & s14(3) > an injury sustained when travelling between a place of residence and work was by a route that substantially increased the risk of sustaining an injury when compared with a more direct route: – s6(2), 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"> > a worker within the meaning of the <i>Safety, Rehabilitation and Compensation Act 1988</i> > an injury that is intentionally self-inflicted > an injury caused by the serious and wilful misconduct of the worker, unless the injury results in death, or serious and permanent impairment > where a worker made a wilful and false representation that he/she suffered from a disease or an aggravation of a disease: – s12
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 requested in writing for the worker to 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>

Jurisdiction (continued)	Exclusionary provisions (as at 1 October 2006) (continued)
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)</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) > in respect of any injury to or death of a worker caused by an intentional self-inflicted injury: – s14(3) > to a member of the Police Service who is a contributor to the Police Superannuation Fund under the <i>Police Regulation (Superannuation) Act 1906 (s4, 1998 Act)</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, if remuneration is less than \$700 per year: – s4 (1998 Act) > except as provided by Schedule 1, 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>
South Australia	<p>Effect of misconduct etc: – s30B</p> <p>(1) 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</p> <ul style="list-style-type: none"> (a) the worker is acting in contravention of a statutory or other regulation applicable to the employment; or (b) the worker is acting without, or in contravention of, instructions from the employer <p>(2) However</p> <ul style="list-style-type: none"> (a) a worker will not be presumed to be acting in the course of employment if the worker is guilty of misconduct or acts in contravention of instructions from the employer during the course of an attendance under section 30(3); and (b) a disability is not compensable if it is established on the balance of probabilities that the disability is wholly or predominantly attributable to <ul style="list-style-type: none"> (i) serious and wilful misconduct on the part of the worker; or (ii) the influence of alcohol or a drug voluntarily consumed by the worker (other than a drug lawfully obtained and consumed in a reasonable quantity by the worker) <p>(3) 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)</p> <p>Compensation is not payable whilst a worker is in prison: – s116</p>

Jurisdiction (continued)	Exclusionary provisions (as at 1 October 2006) (continued)
<p>Western Australia</p>	<p>If it is proved that the injury of a worker is attributable to their–</p> <ul style="list-style-type: none"> a) voluntary consumption of alcoholic liquor or of a drug of addiction, or both, which impairs the proper functioning of their faculties; b) 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 c) other serious and wilful misconduct <p>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> <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> †
<p>Queensland</p>	<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 > 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>Insurer may suspend compensation if worker:</p> <ul style="list-style-type: none"> > is serving a term of imprisonment: – s137 > fails to participate in a 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> <p>*WRI: – Work related impairment</p>

† No hyperlink provided as legislation has been repealed.

Jurisdiction (continued)	Exclusionary provisions (as at 1 October 2006) (continued)
Tasmania	<p>A person is deemed not to be a worker within the meaning of the Act while he or she 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 preparation with a view to participating, or c) travelling in connection with participating or being so engaged – <p>if, under that contract, he or she is not entitled to any remuneration other than remuneration for the doing of those things: – <u>s7</u></p> <p>Compensation is not payable:</p> <ul style="list-style-type: none"> > if the injury was caused by the serious and wilful misconduct of the worker unless it results in death or serious and permanent impairment, or an intentional self-inflicted injury > 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: – <u>s25(2)</u> <p>The Act does not apply to any person –</p> <ul style="list-style-type: none"> a) whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business; or b) who is an outworker; or c) who is a domestic servant in a private family, and has not completed 48 hours' employment with the same employer at the time when he suffers injury; or d) who is a member of the crew of a fishing boat, and is remunerated wholly or mainly by a share in the profits or gross earnings of that boat; or e) notwithstanding section <u>s4D</u>, who is participating in an approved program of work 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: – <u>s4(5)</u>
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: – <u>s57(1)</u></p> <p>Compensation is not payable unless any 2 of the following apply:</p> <ul style="list-style-type: none"> a) the worker to or in relation to whom it is payable was a resident of the Territory at the time the relevant incident occurred b) his or her employer was a resident of or carrying on business in the Territory at the time the relevant incident occurred; or c) the relevant incident occurred in the Territory: –<u>s57(2)</u> <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: –<u>s60</u></p> <p>Employees of 'approved' labour hire firms are not seen as workers – <u>Reg 3A</u></p>

Jurisdiction (continued)	Exclusionary provisions (as at 1 October 2006) (continued)
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
New Zealand	<p>Compensation is not payable</p> <ul style="list-style-type: none"> > if the injury to, or death of, the worker is caused by an intentionally self-inflicted injury or suicide unless it is the result of mental injury: – s119 > because they are 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: – s121 <p>While a person is in prison, and on release ACC can apply to the courts to have any entitlements denied: – s122</p>

EXCLUSIONARY PROVISIONS – PSYCHOLOGICAL INJURIES

Psychological injuries (see Glossary) are generally included in the definition of diseases. However, each jurisdiction excludes certain circumstances and incidents from coverage by workers’ compensation. The table below shows the exclusionary provisions in each of the jurisdictions.

Jurisdiction	Psychological injuries – exclusionary provisions (as at 1 October 2006)
Commonwealth	<p>Comcare: Compensation is not payable in respect of an injury (being a disease) if the injury is:</p> <ul style="list-style-type: none"> > due to reasonable disciplinary action: – s4(1) > due to failure to obtain a promotion, transfer or benefit: – s4(1) > intentionally self-inflicted: – s14(2) > due to the worker making a false representation, connected with their employment: – s7(7) <p>Seacare: Compensation is not payable in respect of a worker’s psychological condition, being a ‘disease’, if the injury is a result of reasonable disciplinary action taken against the worker, failure by worker to obtain a promotion, transfer or benefit in connection with his or her employment: – s3</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> <ul style="list-style-type: none"> (i) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, redeploy, retrench or dismiss the worker (ii) 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 (iii) an expectation of the taking of such action or making of such a decision: – s82(2A)

Jurisdiction (continued)	Psychological injuries – exclusionary provisions (as at 1 October 2006) (continued)
New South Wales	<p>No compensation is payable under the Act in respect of an injury that is a psychological injury unless:</p> <ul style="list-style-type: none"> a) the employment concerned was a substantial cause of the injury; and b) the injury was not 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: – s11A
South Australia	<p>A disability consisting of an illness or disorder of the mind is compensable if and only if</p> <ul style="list-style-type: none"> a) the employment was a substantial cause of the disability; and b) the disability did not arise wholly or predominantly from— <ul style="list-style-type: none"> (i) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker (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 (iii) reasonable administrative action taken in a reasonable manner by the employer in connection with the worker’s employment; or (iv) reasonable action taken in a reasonable manner under this Act affecting the workers: – s30A
Western Australia	<p>Compensation is not payable for diseases caused by stress. Stress is not defined as an injury 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 as previously stated: – s5(4)</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> <ul style="list-style-type: none"> a) reasonable management action taken in a reasonable way by the employer in connection with the worker’s employment b) the worker’s expectation or perception of reasonable management action being taken against the worker; c) action by the Authority or an insurer in connection with the worker’s application for compensation <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>
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> <ul style="list-style-type: none"> (i) reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline or counsel a worker or to bring about the cessation of a worker’s employment (ii) a decision of an employer, based on reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with a worker’s employment (iii) reasonable administrative action taken in a reasonable manner by an employer in connection with a worker’s employment (iv) the failure of an employer to take action of a type referred to above in relation to a worker in connection with the worker’s employment if there are reasonable grounds for not taking that action; or (v) reasonable action taken by an employer under this Act in a reasonable manner affecting a worker: – s25(1A)

Jurisdiction (continued)	Psychological injuries – exclusionary provisions (as at 1 October 2006) (continued)
Northern Territory	Compensation is not payable if the injury is: <ul style="list-style-type: none"> > due to reasonable disciplinary action > due to failure to obtain promotion, transfer or benefit; or > caused as a result of reasonable administrative action taken in connection with the worker's employment: – s3(1)
Australian Capital Territory	Mental injury (including stress) does not include a mental injury (including stress). A condition 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)
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

BENEFITS

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* (see Glossary) 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* (see Glossary) 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

INCOME REPLACEMENT PAYMENTS

***Income replacement payments* (see Glossary) (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 or partially incapacitated 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.

Income replacement arrangements differ across all of the workers' compensation jurisdictions.

The table below shows the income replacement arrangements in each jurisdiction.

Income replacement payments (as at 1 October 2006)	
JURISDICTION	CALCULATION
Commonwealth	<p>< 45 weeks: 100% Normal weekly earnings (NWE) with no maximum cap applied > 45 weeks: 75% of NWE</p> <p>Maximum: \$1,564.50 from 17 August 2006 (150% of Average Week Ordinary Time Earnings for Full-time Adults as published by Australian Bureau of Statistics)</p> <p>Minimum: 356.90</p> <p>Additional for prescribed person \$88.37 and for each dependent child \$44.16. Compensation payments for ex-workers were increased by reference to the ABS Wage Cost Index by 4.2% from 1 July 2006: – Part II, Div 3</p> <p>Section 19(3) provides for a system of incentives to encourage even a partial return to work via increases, on a sliding scale, ranging from 80% of NWE for any hours worked up to 25% of normal hours, up to 95% of NWE for any hours worked equalling between 75% and 99% of normal hours. A return to (any) employment at 100% of normal hours provides for 100% of NWE less actual earnings.</p>
Victoria	<p>Due to statutory changes to scheme on 12/11/97, benefit rates depend on date of entitlement Pre 12/11/97: Workers entitled to receive weekly benefits; old rates apply Post 12/11/97:</p> <p>< 13 weeks: 95% of pre-injury average weekly earnings (PIAWE) (maximum: \$1,190), less notional earnings: – s93CA</p> <p>> 13 weeks: If no current work capacity 75% of PIAWE; or if some work capacity either:</p> <p>(a) 75% of PIAWE less 75% of notional earnings, or</p> <p>(b) \$1,190 less 75% of notional earning, 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: Weekly benefits cease after 130 weeks of weekly payments unless:</p> <p>(a) worker is likely to have no current work capacity indefinitely, benefits continue while this is the case until retirement age: – s93CC; or</p> <p>(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 \$139 per week: – s93CD</p>

Income replacement payments (as at 1 October 2006) (continued)

JURISDICTION	CALCULATION
New South Wales	<p>Part 3, Div 2 Total Incapacity:</p> <p>Total incapacity <26 weeks: 100% of worker's Current Weekly Wage Rate, or where no award/enterprise agreement, 80% of average weekly earnings, excluding overtime and allowances (maximum weekly rate: \$1,479.40).</p> <p>Total incapacity >26 weeks: \$347.90, plus the following additional amount for spouse and/or dependent children</p> <ul style="list-style-type: none"> > spouse: \$91.70 > 1 child: \$65.50 > 2 children: \$146.60 > 3 children: \$242.90 > 4 children: \$341.60 > For each additional dependant child in excess of 4: \$98.50 <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:</p> <p>Partial incapacity <26 weeks with worker not suitably employed: payment as per the total incapacity rate</p> <p>Partial incapacity 26-52 weeks with worker not suitably employed: 80% of current weekly wage rate or the amount that would be payable for total incapacity (whichever is greater)</p> <p>Partial incapacity (all other circumstances): difference between the amount worker would probably have been earning was it not for the injury and the amount currently earning (or able to earn). Maximum weekly benefit payment: \$1,479.40.</p> <p>> 104 weeks: Payments can be discontinued at the end of 104 weeks of partial incapacity if the worker 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> <p>Benefits are indexed on 1 April and 1 October each year.</p>
South Australia	<p>< 52 weeks:</p> <p>Worker's Average Weekly Earnings (WAVE) to a maximum of 2 x State average weekly earnings (AWE). Maximum: \$2,038.80 at 17/8/06 less actual earnings if partially incapacitated.</p> <p>> 52 weeks:</p> <ul style="list-style-type: none"> (a) Total incapacity: 80% of WAVE subject to a maximum of 80% of 2 x State AWE. Maximum: \$1,631.04 at 17/8/06 (b) Partial incapacity: 80% of difference between worker's adjusted notional weekly earnings (NWE) and earnings from employment, or potential earnings in suitable employment that the worker has a reasonable prospect of obtaining. Maximum: \$1,631.04 at 17/8/06 less actual or potential earnings if partially incapacitated <p>> 104 weeks:</p> <p>If worker partially incapacitated and not in suitable employment, 80% of difference between NWE and what the worker is deemed capable of earning in suitable employment. Otherwise same as for > 52 weeks: – Part 4, Div 4</p>

Income replacement payments (as at 1 October 2006) (continued)

JURISDICTION	CALCULATION
Western Australia	<p>A cap on weekly payments of \$1,609.90 applies for the duration of claims. This amount is indexed annually (every 1 July).</p> <p>Workers whose earnings are prescribed by an industrial award</p> <p>First 13 weeks of claim: Weekly payments will consist of the rate of the worker's average weekly earnings payable under the relevant industrial award, plus any over award or service payment paid on a regular basis, including overtime, bonuses or allowances up to a maximum of \$1,609.90. Overtime, bonuses or allowances are averaged over the 13 weeks before the disability occurred: – Schedule 1, clause 11(3)(a)</p> <p>14th week onward: Weekly payments consist of the rate of weekly earnings payable under the relevant industrial award, plus any over award or service payment paid on a regular basis, any allowance paid on a regular basis as part of the worker's earnings and related to the number and pattern of hours worked. but, excluding overtime, bonuses or allowances. Maximum payment is \$1,609.90. Minimum rate: Subject to the cap of \$1,609.90, the minimum rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant award: – Schedule 1, clause 11(3)(b)</p> <p>Workers whose earnings are not prescribed by an industrial award</p> <p>First 13 weeks of claim: Weekly payments will consist of the worker's average weekly earnings (including overtime, bonuses and allowances) averaged over the year before the disability occurred, up to a maximum of \$1,609.90: – Schedule 1, clause 11(4)(a)</p> <p>14th week onward: Weekly payments 'step down' to 85% of the worker's average weekly earnings; maximum payment is \$1,609.90. Minimum rate: Subject to the cap of \$1,609.90, the minimum rate of weekly earnings payable under the <i>Minimum Conditions of Employment Act 1993</i>: – Schedule 1, clause 11(4)(b)</p>
Queensland	<p>For the first 26 weeks: Workers under an industrial instrument s150(1)(a) – the greater of:</p> <p>(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:</p> <p>(a) 85% of NWE (b) 80% of QOTE</p> <p>Queensland Ordinary Time Earnings (QOTE) is currently \$969.50</p> <p>Workers on contract (s152(1)(a)):- the greater of</p> <p>(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 52 weeks, whether or not worker is under an industrial instrument or contract s150(1)(b), s151(1)(b) and 152(1)(b) - the greater of:</p> <p>(a) 75% of the worker's NWE (b) 70% of QOTE</p> <p>From the end of the first 52 weeks to the end of the first 2 years, whether or not worker is under an industrial instrument or contract s150(1)(c), s151(1)(c) and 152(1)(c) - the greater of 65% NWE and 60% 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) and s151(1)(d) and 152(1)(d) - the greater of:</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) and s151(1)(d) - the greater of:</p> <p>(a) 65% of the worker's NWE (b) 60% of QOTE: –</p> <p>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. \$209,555 (from 1 July 2006).</p>

Income replacement payments (as at 1 October 2006) (continued)

JURISDICTION	CALCULATION
Tasmania	<p>< 13 weeks: 100% of weekly payment i.e. the greater of normal weekly earnings (NWE) for the period of twelve months prior to the period of incapacity, or ordinary-time rate-of-pay for work engaged in prior to incapacity.</p> <p>> 13 weeks: Greater of 85% of weekly payment or \$372.08 (from 1/1/06).</p> <p>> 78 weeks: Greater of 80% of weekly payment or \$372.08 (from 1/1/06).</p> <p>Entitlement to weekly payments ceases on the expiration of 9 years after the date of the incapacity: – s69B</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:</p> <p>(a) 75% of NWE to a maximum of \$1,558.50; or</p> <p>(b) \$519.50 plus \$129.90 for a dependant spouse and \$64.94 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 worker has been deemed to have an earning capacity, without having regard to the availability of suitable employment: – s65(2)(b)(ii)</p>
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> <p>(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</p> <p>(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</p> <p>(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>

Income replacement payments (as at 1 October 2006) (continued)

JURISDICTION	CALCULATION
<p>Australian Capital Territory (continued)</p>	<p>Partial Incapacity</p> <p><u>s39</u> - 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><u>s39(4)(b)</u> - 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><u>s42</u> - 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 statutory floor – 100% of the worker's average pre-incapacity weekly earnings; or (b) if the relevant percentage of the worker's average pre-incapacity weekly earnings is less than the statutory floor – the statutory floor; or (c) if the relevant percentage of the worker's average pre-incapacity weekly earnings is more than the statutory ceiling*** – the statutory ceiling; or (d) in any other case – the relevant percentage of the worker's average pre-incapacity weekly earnings <p>Relevant percentage is:</p> <ul style="list-style-type: none"> (a) if the worker is not working or works 25% of the worker's average pre-incapacity weekly hours or less - 65%; or (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 (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 (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 (e) if the worker is working more than 85% of the worker's average pre-incapacity weekly hours – 100% <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>

Income replacement payments (as at 1 October 2006) (continued)

JURISDICTION	CALCULATION
New Zealand	<p>Employees For weeks 2-5, 80% of short term rate, which is defined as:</p> <p><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</p> <p><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:</p> <p><i>Permanent employees:</i> earnings from that job in the 52 weeks prior divided by weeks in which they were derived: – Schedule 1, Part 1, 34</p> <p><i>Non-permanent employees:</i> all earnings in the 52 weeks prior divided by 52 weeks: – Schedule 1, Part 1, 36</p> <p>Self-employed Either:</p> <p>(a) the greater of earnings in the 52 weeks prior to incapacity divided by the number of weeks worked or the minimum full-time earner rate</p> <p>(b) earnings as an employee and as a self-employed person in the 52 weeks prior to incapacity divided by weeks as an employee plus weeks worked as self-employed</p> <p>(c) weeks as an employee divided by 52 plus self-employed earnings divided by 52: – Schedule 1, Part 1, s38</p> <p>Share-holder-employees Either:</p> <p>(a) earnings in the 52 weeks prior to incapacity divided by the number of weeks worked</p> <p>(b) earnings as an employee and as a shareholder-employee in the 52 weeks prior to incapacity divided by weeks as an employee plus weeks worked as a shareholder-employee; or</p> <p>(c) weeks as an employee divided by 52 plus shareholder-employee earnings divided by 52: – Schedule 1, Part 1, s39</p> <p>Maximum is NZ\$79,853.80. Will be reduced by a proportion of any earnings derived in the period of incapacity. Minimum for full-time earners: 80% of NZ\$410 (80% of NZ\$328 for <18 years of age).</p>

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. The payments 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.

Incapacity benefits settlements (as at 1 October 2006)										
JURISDICTION	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
COVERAGE	Yes— some restrictions	Yes – some restrictions	Yes – some restrictions	Yes						

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.

The table below shows how the *medical and hospital benefits* (see Glossary) are calculated and any limits that may apply.

Medical and hospital costs (as at 1 October 2006)		
JURISDICTION	CALCULATION	LIMITS
Commonwealth	All reasonable costs.	Comcare: No limit – appropriate costs: – s16 Seacare: No limit: – s28
Victoria	All reasonable costs.	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. If injury is a severe injury or results in death, counselling services will be provided to family members, not exceeding \$1,960: – s99(1)(aa)
New South Wales	All reasonable costs: – s60(1)	\$7,500 for reasonably necessary medical costs under provisional liability. The insurer can approve amounts in excess of \$7,500 in exceptional circumstances \$50,000 for duly made claims. Insurers can apply to WorkCover to approve amounts in excess of \$50,000

Medical and hospital costs (as at 1 October 2006) (continued)		
JURISDICTION	CALCULATION	LIMITS
South Australia	<p>A worker is entitled to be compensated for reasonable costs, reasonably incurred, (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 specific costs authorised by WorkCover: – s32(2) 	–
Western Australia	Reasonable expenses incurred. Schedule 1, clause 17	<p>30% of prescribed amount (\$45,621.00). 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>
Queensland	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	–
Tasmania	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)	Entitlements cease ten years after the date of the claim was lodged.
Northern Territory	All reasonable costs.	No limit: – s73

Medical and hospital costs (as at 1 October 2006) (continued)		
JURISDICTION	CALCULATION	LIMITS
Australian Capital Territory	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 Employer is liable to pay for hospital treatment: – s73	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. The maximum amount means an amount agreed between employer and worker or \$500 CPI indexed: – s70
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

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* (see Glossary) are a lump sum payment for each impairment sustained to cover *non-economic loss* (see Glossary).

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

Permanent impairment payments (as at 1 October 2006)				
JURISDICTION: COMMONWEALTH				
BENEFITS	GUIDELINES	THRESHOLD TEST	MAXIMUM LUMP SUM	SETTLEMENT, REDEMPTION, COMMUTATION
<i>Economic:</i> \$141,351.15 <i>Non Economic:</i> \$53,006.72	Guide to the Assessment of the Degree of Permanent Impairment (2 nd Edition) – based on American Medical Association Guidelines to the Evaluation of Permanent Impairment (5 th Edition)	Comcare: 10% Whole Person Impairment (WPI)* 5% hearing loss Finger/toe Taste/smell Seacare: 10% WPI**	Comcare: \$194,357.87 Seacare: \$194,357.87	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 (\$88.37 per week (1 July 2006)) and Comcare is satisfied that the degree of incapacity is unlikely to change. The lump sum payment is calculated by a specified formula

Permanent impairment payments (as at 1 October 2006) (continued)

JURISDICTION: VICTORIA

BENEFITS	GUIDELINES	THRESHOLD TEST	MAXIMUM LUMP SUM	SETTLEMENT, REDEMPTION, COMMUTATION
Single Benefit	<p><i>Physical (excluding hearing and psychiatric) – AMA Guides to the Evaluation of Permanent Impairment (4th Edition) modified for Chapter 3, substituting Chapter 5 (Tables 8 & 10) and excluding Chapter 15</i></p> <p><i>Hearing loss: the improved Procedures for Determination of Percentage loss of hearing (1988 Edition or later prescribed edition)</i></p> <p><i>Psychiatric: The Guide to the Evaluation of Psychiatric Impairment for Clinicians</i></p>	<p>10% WPI (modified for Chapter 3 impairments)</p> <p>10% WPI and additional 10% WPI for further hearing loss</p> <p>30% WPI – not arising secondary to physical injury</p>	\$373,420	<p>A settlement of weekly benefits in a lump sum is allowable in some circumstances. There are 3 separate subdivisions for voluntary settlements each with their own specific eligibility criteria: – <u>Part IV, Div 3A</u>. The settlement does not include medical and like expenses which continue to be paid</p>

Permanent impairment payments (as at 1 October 2006) (continued)

JURISDICTION: NEW SOUTH WALES

BENEFITS	GUIDELINES	THRESHOLD TEST	MAXIMUM LUMP SUM	SETTLEMENT, REDEMPTION, COMMUTATION
Up to \$260,000, for non-economic loss arising from permanent impairment. Payable in addition to other benefit types <u>Part 3, Div 4</u>	American Medical Guides to the Evaluation of Permanent Impairment (5 th Edition) and the New South Wales WorkCover Guides for the Evaluation of Permanent Impairment	1% WPI generally 15% WPI for psychiatric and psychological impairment 6% binaural hearing loss for hearing loss claims	\$200,000	Settlements of future entitlements to weekly benefits (commutations) are allowed by agreement between worker and insurer. Commutation is only available if 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 6 months, 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, worker has received independent legal advice and the legal practitioner has certified in writing that the worker has been fully advised of and understands the implications and consequences of accepting a commutation, insurer and worker agree with the commutation, WorkCover agrees with the commutation, all agreements must be registered with the Workers' Compensation Commission: – <u>Part 3, Div 9</u>

JURISDICTION: SOUTH AUSTRALIA

BENEFITS	GUIDELINES	THRESHOLD TEST	MAXIMUM LUMP SUM	SETTLEMENT, REDEMPTION, COMMUTATION
Varying amounts according to class and degree of disability, set out in <u>Third Schedule</u> to the Act Redemptions under <u>s42</u>	Third Schedule, and Guides to the Evaluation of Permanent Impairment Third Edition (Revised) (AMA) By agreement between the worker and WorkCover	5% for hearing loss	Maximum is 1.675 times the Prescribed Sum (as at 1 Oct 2006, \$131,000)	Where the worker suffers a permanent disability that is compensable under the Act, a lump sum is payable for non-economic loss. (subject to Regulations concerning aggravation of prior disabilities, and accumulation of previous injuries): – <u>s43</u> Redemptions are negotiated and agreed between the worker and WorkCover. Any such agreed figure is in addition to a <u>s43</u> lump sum entitlement

Permanent impairment payments (as at 1 October 2006) (continued)

JURISDICTION: WESTERN AUSTRALIA				
BENEFITS	GUIDELINES	THRESHOLD TEST	MAXIMUM LUMP SUM	SETTLEMENT, REDEMPTION, COMMUTATION
Single Benefit	WorkCover WA Guides for Evaluation of Permanent Impairment	0% WPI	\$152,070	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 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: – Schedule 2
JURISDICTION: QUEENSLAND				
BENEFITS	GUIDELINES	THRESHOLD TEST	MAXIMUM LUMP SUM	SETTLEMENT, REDEMPTION, COMMUTATION
Single Benefit	American Medical Association Guidelines to the Evaluation of Permanent Impairment (4 th Edition)	0%	\$209,555	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
JURISDICTION: TASMANIA				
BENEFITS	GUIDELINES	THRESHOLD TEST	MAXIMUM LUMP SUM	SETTLEMENT, REDEMPTION, COMMUTATION
Single Benefit	American Medical Association Guidelines to the Evaluation of Permanent Impairment (4 th Edition): – s71 & s72 and Tasmanian Workers Compensation Guidelines for the Assessment of Permanent Impairment: – s72(1)(a)	% WPI** 10% WPI (psychological) >5% binaural hearing impairment = 5 + [0.278 (BHI - 5)] % WPI – reg 17 & s73(4)	\$196,116	Settlement of claim by agreement where injury is stable and stationary and 12 months has elapsed since lodgement of claim: – s39

Permanent impairment payments (as at 1 October 2006) (continued)

JURISDICTION: NORTHERN TERRITORY				
BENEFITS	GUIDELINES	THRESHOLD TEST	MAXIMUM LUMP SUM	SETTLEMENT, REDEMPTION, COMMUTATION
Single Benefit	American Medical Association Guides to the Evaluation of Permanent Impairment (4 th Edition)	5% WPI	\$216,112	Commute weekly benefits into lump sum payment. Maximum 156 times NWE or 156 times AWE, whichever is greater: – <u>s74</u> . Only for workers who are not totally incapacitated and rehabilitation is completed. Medical and like expenses are continued to be paid
JURISDICTION: AUSTRALIAN CAPITAL TERRITORY				
BENEFITS	GUIDELINES	THRESHOLD TEST	MAXIMUM LUMP SUM	SETTLEMENT, REDEMPTION, COMMUTATION
Single Benefit	American Medical Guides to the Evaluation of Permanent Impairment (5 th Edition) and the New South Wales WorkCover Guides for the Evaluation of Permanent Impairment (1 st Edition)	0%	\$110,033 single \$165,050 multiple	Negotiated between injured worker and employer/insurer. <u>Schedule 1</u> 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: NEW ZEALAND				
BENEFITS	GUIDELINES	THRESHOLD TEST	MAXIMUM LUMP SUM	SETTLEMENT, REDEMPTION, COMMUTATION
Single Benefit	American Medical Association Guidelines to the Evaluation of Permanent Impairment (4 th Edition)	10%	NZ\$110,555.80	Injury prior to 1 April 2002, an independence allowance may be payable if impairment > 10% 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

* 0% for loss of fingers, toes, taste and smell

** 0% for loss of fingers and toes

DEATH BENEFITS

In the event that a workplace injury results in death, all jurisdictions provide access to *death benefits* (see Glossary). 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* (see Glossary) and ongoing living expenses. The amount and type of damages accessible vary between jurisdictions.

The table below outlines death benefits in each jurisdiction.

Death Benefits (as at 1 October 2006)		
JURISDICTION: COMMONWEALTH		
LUMP SUM	PERIODIC PAYMENTS	OTHER BENEFITS
Comcare: \$212,026.74: – s17(3), (4) Seacare: \$212,026.74: – s29(3)	\$70.65 a week to each child under 16 (or 25 if full-time student): – s17(5) \$70.65 a week to each child under 16 (or 25 if full-time student): – s29(5)	Reasonable <i>funeral expenses</i> , not exceeding \$4,894.39: – s18(2) Reasonable funeral expenses, not exceeding \$4,894.39: – s30(2)
JURISDICTION: VICTORIA		
LUMP SUM	PERIODIC PAYMENTS	OTHER BENEFITS
\$250,000: – s92A	Determined by average pre-injury earnings, subject to statutory maximum: – s92B First 13 weeks: > 95% of earnings > \$1,190 max 14 weeks: – 3 years: > 50% of earnings > \$1,190 max \$796 max for partner with more than 5 children A range of payments depending on the particular circumstances of the child	Reasonable funeral expenses, not exceeding \$9,000: – s99 Counselling for family members, max. total \$1,960: – s99
JURISDICTION: NEW SOUTH WALES		
LUMP SUM	PERIODIC PAYMENTS	OTHER BENEFITS
\$313,450: – s25	\$98.50 a week to each child: – s25(1)(b)	Funeral expenses \$9,000 maximum: – s27

Death Benefits (as at 1 October 2006) (continued)		
JURISDICTION: SOUTH AUSTRALIA		
LUMP SUM	PERIODIC PAYMENTS	OTHER BENEFITS
<p>Dependent spouse: – A lump sum equal to 1.675 times the prescribed sum (subject to CPI) less any amount that the worker received as compensation for <i>non-economic loss</i> under Division 5: – s44(1)(b)</p> <p>Dependent orphaned child: – A lump sum equal to 50% of 1.675 times the prescribed sum (subject to CPI) less any amount that the worker received as compensation for <i>non-economic loss</i> under Division 5: – s44(1)(b). [If there are more than 1 dependent orphaned children, that amount is divided between them]</p> <p>Max \$219,425</p>	<p>Dependent spouse - 50% (less for partially dependent spouse) of the amount of the notional weekly earnings of the deceased worker: – s44(1)(b)</p> <p>Dependent orphaned child - 25% (less for partially dependent child) of the amount of the notional weekly earnings of the deceased worker: – s44(1)(d)</p> <p>Dependent non-orphaned child - 12.5% (less for partially dependent child) of the amount of the notional weekly earnings of the deceased worker: – s44(1)(d)</p> <p>Dependent relative: – may be eligible for lump sum and weekly payments if WorkCover determines they are eligible in their particular circumstances</p>	<p>Funeral expenses: – maximum as at 1 Oct 2006, \$6,750 subject to annual CPI increase: – s44(1)(a)</p>
JURISDICTION: WESTERN AUSTRALIA		
LUMP SUM	PERIODIC PAYMENTS	OTHER BENEFITS
<p>\$200,000 from 14 November 2005: – Schedule 1</p>	<p>\$39.90 (subject to CPI) per each dependent child up to age 16 or 21 if a student: – Schedule 1</p>	<p>Funeral expenses- \$7,547 Increases automatically indexed 1 July every year: – Schedule 1(17)</p>
JURISDICTION: QUEENSLAND		
LUMP SUM	PERIODIC PAYMENTS	OTHER BENEFITS
<p>\$384,625 (as varied) reduced by the total amount of weekly payment of compensation: – Ch 3, Part 11</p>	<p>\$20,000 additionally paid to each dependent member of family other than spouse: – Ch 3, part 11</p> <p>10% of QOTE payable to each child until 16 (or 21 if student): – Ch 3, Part 11</p>	<p>Reasonable funeral expenses: – s199, Ch 3 Part 11</p>
JURISDICTION: TASMANIA		
LUMP SUM	PERIODIC PAYMENTS	OTHER BENEFITS
<p>\$196,116 (from 1/1/06 as varied): – s67</p>	<p>Spouse is entitled to weekly payments calculated at the same rate as the deceased would have received if he/she became totally incapacitated: – s67A</p> <p>> First 13 weeks: 100% of weekly payments > 14-78 weeks: 85% of weekly payments 78 weeks-2 years: 80% of weekly payments 10% of the <i>basic</i> salary, commencing on the expiration of 13 weeks after the date of death: – s67A</p>	<p>Employer is liable to pay as compensation the reasonable cost of burial or cremation: – s75</p>

Death Benefits (as at 1 October 2006) (continued)		
JURISDICTION: NORTHERN TERRITORY		
LUMP SUM	PERIODIC PAYMENTS	OTHER BENEFITS
Entitled to 260 times the average weekly earnings in: <ul style="list-style-type: none"> > prescribed proportions (share with children –, or such proportions as the Court determines: – s62(1) 	Prescribed proportion of 260 times the average weekly: – s62(1) 10% of average weekly earnings for each child under 16 (or 21 if student), for up to 10 children: – s63	Max: – 10% of the annual equivalent of average weekly earning for funeral costs: – s62(1)(a)
JURISDICTION: AUSTRALIAN CAPITAL TERRITORY		
LUMP SUM	PERIODIC PAYMENTS	OTHER BENEFITS
\$150,000 CPI indexed (to be divided between the dependants: – s77(2))	\$50 per child CPI indexed: – s77(2)	\$4,000 CPI indexed for funeral expenses: – s77(2)
JURISDICTION: NEW ZEALAND		
LUMP SUM	PERIODIC PAYMENTS	OTHER BENEFITS
Spouse: NZ\$5,333.86 Each child or other dependent: NZ\$2,666.94	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\$4,975.01 Child care payments: NZ\$113.42 for a single child, NZ\$68.05 each if there are more than two children, and a total of NZ\$158.79 for 3 or more children

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* (see Glossary) or *home help* (see Glossary). Where reimbursement is provided, it is generally provided for expenses which are reasonably necessary.

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

Attendant Care (as at 1 October 2006)		
JURISDICTION: COMMONWEALTH		
REIMBURSEMENT	CALCULATION	LIMITS
<p>Comcare: liable to pay compensation for attendant care services reasonably required in the amount of:</p> <p>a) \$353.37 per week s29(1); or</p> <p>b) an amount per week equal to the amount per week paid or payable by the worker for those services</p> <p>Whichever is less: – s29(3)</p> <p>Seacare: compensation is payable at the rate of:</p> <p>a) \$353.37 per week s43(1); or</p> <p>b) an amount per week equal to the amount per week paid or payable by the worker for the services</p> <p>Whichever is less: – s43(4)</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>The following matters need to be considered in determining reasonable requirement for obtaining attendant care services:</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 service 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; and > the extent to which a relative of the worker might reasonably be expected to provide attendant care services: – s43(5)

Attendant Care (as at 1 October 2006) (continued)		
JURISDICTION: VICTORIA		
REIMBURSEMENT	CALCULATION	LIMITS
<p>Yes. When making an assessment of the attendant care program, the agent must take into 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: – s5(1), 99 	–	–
JURISDICTION: NEW SOUTH WALES		
REIMBURSEMENT	CALCULATION	LIMITS
<p>Yes included in the definition of medical or related treatment: – s59 (1987 Act)</p>	<p>Attendant care is included in the definition of medical or related treatment: – s59 (1987 Act)</p>	<p>The maximum amount for which an employer is liable for medical or related treatment is:</p> <ul style="list-style-type: none"> a) \$50,000, or b) Where some greater amount has been fixed by the Authority by order published in the Gazette – the greater amount: – s61(3) (1987 Act)
JURISDICTION: SOUTH AUSTRALIA		
REIMBURSEMENT	CALCULATION	LIMITS
<p>The Corporation 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>The Corporation may pay the cost of attendance by a registered or enrolled nurse, or by some other person approved by the Corporation or of a class approved by the Corporation, where the disability is such that the worker must have nursing or personal attendance: – s32(2)(f)</p>	–	–
JURISDICTION: WESTERN AUSTRALIA		
REIMBURSEMENT	CALCULATION	LIMITS
<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>	–	–

Attendant Care (as at 1 October 2006) (continued)

JURISDICTION: QUEENSLAND

REIMBURSEMENT	CALCULATION	LIMITS
<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 voluntarily 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 	–

JURISDICTION: TASMANIA

REIMBURSEMENT	CALCULATION	LIMITS
<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> <ul style="list-style-type: none"> a) the necessity for such services b) the period for which such services are to be provided; and c) the level of payments which it considers to be reasonable and appropriate for such services: – s75(3) 	–	–

Attendant Care (as at 1 October 2006) (continued)

JURISDICTION: NORTHERN TERRITORY

REIMBURSEMENT	CALCULATION	LIMITS
<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 continue employment > 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>	–	–

JURISDICTION: AUSTRALIAN CAPITAL TERRITORY

REIMBURSEMENT	CALCULATION	LIMITS
Not prescribed under ACT legislation.		

Attendant Care (as at 1 October 2006) (continued)

JURISDICTION: NEW ZEALAND

REIMBURSEMENT	CALCULATION	LIMITS
<p>In deciding whether to provide or contribute to the cost of attendant care, the Corporation must have regard to –</p> <ul style="list-style-type: none"> (a) any rehabilitation outcome that would be achieved by providing it (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 (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 (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 (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 (f) the need to avoid substantial disruption to the employment or other activities of household family members: – cl(14) 	–	–

Home Help (as at 1 October 2006)		
JURISDICTION: COMMONWEALTH		
REIMBURSEMENT	CALCULATION	LIMITS
<p>Comcare: Liable to pay compensation for household services reasonably required: – s29(1)</p> <p>Seacare: Compensation is payable if worker reasonably requires household services: – s43(1)</p>	<p>50% of the amount per week paid or payable by the worker for those services not more than \$353.37: – s29(1)</p> <p>Amount of compensation payable must not be more than \$353.37; and must 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>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>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: – s43(3)

Home Help (as at 1 October 2006) (continued)

JURISDICTION: VICTORIA

REIMBURSEMENT	CALCULATION	LIMITS
<p>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> <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 	<p>The Act defines 'reasonable costs' as an amount:</p> <ul style="list-style-type: none"> > determined by the VWA, employer, or self-insurer as reasonable in relation to a particular service > 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 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 	–

JURISDICTION: NEW SOUTH WALES

REIMBURSEMENT	CALCULATION	LIMITS
<p>Where reasonably necessary:</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% or the assistance provided is on a temporary basis; and > the assistance provided is in accordance with a care plan established by the insurer in accordance with WorkCover guidelines: – <u>s60AA</u> (1987 Act) 	<p>Domestic assistance is included in the definition of medical or related treatment: – s59 (1987 Act)</p> <p>The maximum amount for which an employer is liable for medical or related treatment is:</p> <ol style="list-style-type: none"> a) \$50,000, or b) Where some greater amount has been fixed by the Authority by order published in the Gazette – the greater amount: – <u>s61(3)</u> (1987 Act) 	–

Home Help (as at 1 October 2006) (continued)

JURISDICTION: SOUTH AUSTRALIA

REIMBURSEMENT	CALCULATION	LIMITS
<p>Reasonable costs reasonably incurred may be reimbursed for the cost of attendance by a registered or enrolled nurse, or by some other person approved by the Corporation or of a class approved by the Corporation, where the disability is such that the worker must have nursing or personal attendance: – s32(2)(f)</p> <p>The Corporation 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>	–	–

JURISDICTION: WESTERN AUSTRALIA

REIMBURSEMENT	CALCULATION	LIMITS
Not prescribed in the legislation. In special circumstances insurers may on a without prejudice basis approve limited homecare		

JURISDICTION: QUEENSLAND

REIMBURSEMENT	CALCULATION	LIMITS
<p>Additional lump sum compensation for gratuitous care up to \$226,555: – s193</p>	<p>The insurer must decide the amount of the worker's entitlement to additional compensation of up to \$226,555, payable according to a graduated scale prescribed under a regulation, having regard to –</p> <p>(a) the worker's WRI</p> <p>(b) the worker's level of dependency; and</p> <p>(c) any other information prescribed under a regulation</p>	<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> <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</p> <p>b) the worker resides at home on a permanent basis</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 mentioned in subsection (1)(b)</p> <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>

Home Help (as at 1 October 2006) (continued)

JURISDICTION: TASMANIA

REIMBURSEMENT	CALCULATION	LIMITS
<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"> a) treatment, training, or other assistance provided to facilitate or assist a worker’s rehabilitation b) the supply of material or equipment in respect of any occupational therapy projects undertaken by a worker; or c) any necessary and reasonable modifications required to be made to a worker’s workplace, place of residence, or motor vehicle: – <u>s74</u> 	–	–

JURISDICTION: NORTHERN TERRITORY

REIMBURSEMENT	CALCULATION	LIMITS
<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: –<u>s78(1)</u></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: –<u>s78(2)(c)</u> 	–	–

Home Help (as at 1 October 2006) (continued)		
JURISDICTION: AUSTRALIAN CAPITAL TERRITORY		
REIMBURSEMENT	CALCULATION	LIMITS
Not prescribed under ACT legislation		
JURISDICTION: NEW ZEALAND		
REIMBURSEMENT	CALCULATION	LIMITS
Social rehabilitation includes: <ul style="list-style-type: none"> > aids and appliances > child care > educational support > home help > home modifications > training for independence; and > transport costs for such training 	All assistance must be provided to meet an assessed, injury-based need. ACC is only responsible for providing the level of assistance required to achieve the planned rehabilitation outcome	<ul style="list-style-type: none"> > The cost of implants is only covered if required by surgery. Maintenance of implants or duplication of existing implants is not covered > Child care and home help is not covered if it was already being provided prior to the accident

RETURN TO WORK

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.

The table below outlines the pre-injury position provisions in each jurisdiction.

Jurisdiction	Pre-injury Position Provisions (as at 1 October 2006)
Commonwealth	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 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'.
Victoria	Under the legislation, employers are required to provide injured workers with the same or equivalent job to the one the injured worker was doing before the injury or illness. This requirement applies for the 12 months of incapacity for work, unless the employer can show this would cause unjustifiable hardship for the employer: – s155A
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)
South Australia	<p>If a worker has suffered a compensable disability, the employer from whose employment the disability arose must provide the worker with employment for which they are fit, the same or equivalent to the worker's pre-injury employment:– s58B. This obligation is not time limited although it does have to be reasonably practicable for the employer to provide the suitable employment.</p> <p>There is a separate provision (s58C) requiring the employer to provide the worker and the WorkCover Corporation with 28 days notice if the employer intends to terminate the worker's contract of employment. This provision only requires the notice and does not prevent the employer from terminating employment. Its purpose is to alert the key parties to the employer's intention to terminate employment.</p> <p>The notice period may vary where there are federally registered industrial arrangements in place that require a different notice period.</p> <p>This ensures that the onus to provide suitable employment is not avoided. These provisions are a general obligation on all employers (registered or self-insured) and there is no time limit. Exceptions to these legislative provisions exist for example where the employer employs less than 10 workers and the worker's incapacity is greater than 12 months: – s58C</p>
Western Australia	<p>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)</p> <p>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</p>
Queensland	The prescribed minimum period an employer is allowed before dismissing a worker solely or mainly because of the injury is 12 months: – s232B
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
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),(2)
Australian Capital Territory	Employer has an obligation to keep a position open for 6 months, if requested by the injured worker: – s105
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>

RETURN TO WORK PROVISIONS

Return to work (see Glossary) 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* (see Glossary) and return to the workforce. Return to work can also involve medical practitioners and rehabilitation service providers rehabilitating injured workers back into the workplace.

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.

The table below outlines the return to work provisions in each jurisdiction.

Return to work provisions (as at 1 October 2006)		
JURISDICTION: COMMONWEALTH		
EMPLOYERS' RESPONSIBILITIES	WORKERS' RESPONSIBILITIES	INCENTIVES FOR NEW EMPLOYERS OF INJURED WORKERS
<ul style="list-style-type: none"> > 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 > the employer (not Comcare or the claims agent) is given statutory powers under the SRC Act (s36 and s37) to develop and deliver rehabilitation programs for injured employees including the engaging of approved rehabilitation providers. In requiring a rehabilitation assessment of the employee or his/her participation in a program, the employer is required to advise the employee in writing, provide the reasons for its decision and notice of rights of review of its decision > arrange for a rehabilitation assessment on the written request of an injured employee: – s36; and > provide suitable duties: – s40 	<ul style="list-style-type: none"> > find out about agency's rehabilitation policy: – s41 > undergo a reasonable assessment for rehabilitation, if required: – s36 > actively participate in a reasonable return to work program: – s37(7) > talk to case manager or rehabilitation provider if there are any concerns about return to work plan > provide ongoing medical certificates; and > authorise access to relevant information from medical, hospital and rehabilitation providers <p>All rights and proceedings under the Act are suspended if an employee fails, without reasonable excuse, to undergo a rehabilitation assessment or a program</p>	<p>No direct financial subsidy scheme; the original employer subsidises any income loss</p>

Return to work provisions (as at 1 October 2006) (continued)

JURISDICTION: VICTORIA

EMPLOYERS' RESPONSIBILITIES	WORKERS' RESPONSIBILITIES	INCENTIVES FOR NEW EMPLOYERS OF INJURED WORKERS
<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 > stay in touch with injured worker > develop individual return to work programs for injured workers: – s160; and > have a risk management program in place: – s159 <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, including medical reports, as to current nature and extent of injury and incapacity: – s93CA, s93CD, s111, s112. > authorise provider of medical services or hospital to provide information regarding injury and treatment in relation to the claim: – s103(d) <p>Benefits may be 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 of up to \$14,860.00 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

Return to work provisions (as at 1 October 2006) (continued)

JURISDICTION: NEW SOUTH WALES

EMPLOYERS' RESPONSIBILITIES	WORKERS' RESPONSIBILITIES	INCENTIVES FOR NEW EMPLOYERS OF INJURED WORKERS
<ul style="list-style-type: none"> > participate and cooperate in the establishment of an injury management plan: – s46 > comply with the provisions of the insurer's Injury Management Program and any Injury Management Plan: – s46 > establish a Return to Work program: – s52 > 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) 	<ul style="list-style-type: none"> > participate and cooperate in the establishment of an Injury Management Plan (if significant injury): – s47(1) > comply with the obligations imposed by the Injury Management Plan: – s47(2) > nominate a treating doctor who is prepared to participate in the development and arrangements under the Injury Management Plan: – s47(3) > authorise the treating doctor to provide relevant information to the insurer and employer: – s47(5); 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 <p>Unreasonable failure to comply can result in suspension or cessation of weekly payments</p>	<p>JobCover Program offers to new employers:</p> <p>Training/employment allowance: up to \$300.00 training/employment allowance per week</p> <p>Premium exemption: a premium exemption for employer for the first 12 months</p> <p>Second injury costs: costs of any claim within 12 months relating to the existing injury, excluded from experience-based premium adjustments</p> <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. 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>

Return to work provisions (as at 1 October 2006) (continued)		
JURISDICTION: SOUTH AUSTRALIA		
EMPLOYERS' RESPONSIBILITIES	WORKERS' RESPONSIBILITIES	INCENTIVES FOR NEW EMPLOYERS OF INJURED WORKERS
<ul style="list-style-type: none"> > comply with obligations under the rehabilitation and return to work plan: – s26, s28A(4), Reg 5 > if reasonably practicable, to provide suitable employment for which the worker is fit: – s58B; and > keep in contact with claims agent 	<p>The disabled worker's weekly benefits may be discontinued, reduced or suspended if:</p> <ul style="list-style-type: none"> > fails to submit to medical examination after written request by WorkCover Corporation > fails to supply prescribed medical certificate for continuing incapacity > fails to submit to proper medical treatment > refuses to participate in, or frustrates a rehabilitation or RTW plan; and > refuses to do suitable work or take reasonable steps to find suitable work, or unreasonably discontinues work: – s36 	<p>RISE (Re-employment Incentive Scheme for Employers) scheme offers new employers of injured workers the following:</p> <ul style="list-style-type: none"> a. gross wage subsidy of 75% for 3 months (excluding overtime) b. gross wage subsidy of 40% for the second 3 months (excluding overtime) c. a retention bonus of up to \$2,000 if the worker is employed for greater than 12 months d. protection from normal liability to pay the first two weeks' income maintenance for that worker, if they suffer an aggravation of the pre-existing condition (up to two years) e. an allowance of up to \$1,000 for appropriate training; and f. reasonable workplace modification cost
JURISDICTION: WESTERN AUSTRALIA		
EMPLOYERS' RESPONSIBILITIES	WORKERS' RESPONSIBILITIES	INCENTIVES FOR NEW EMPLOYERS OF INJURED WORKERS
<ul style="list-style-type: none"> > 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 	<p>No direct financial subsidy scheme</p>

Return to work provisions (as at 1 October 2006) (continued)		
JURISDICTION: QUEENSLAND		
EMPLOYERS' RESPONSIBILITIES	WORKERS' RESPONSIBILITIES	INCENTIVES FOR NEW EMPLOYERS OF INJURED WORKERS
<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 that employ 30 or more workers, in a high risk industry (defined in the <i>Workers' Compensation and Rehabilitation Regulation 2003</i>) and/or have wages in Queensland for the preceding financial year more than \$5.135 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 <i>Workers' Compensation and Rehabilitation Act 2003</i></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 <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>
JURISDICTION: TASMANIA		
EMPLOYERS' RESPONSIBILITIES	WORKERS' RESPONSIBILITIES	INCENTIVES FOR NEW EMPLOYERS OF INJURED WORKERS
<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 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>

Return to work provisions (as at 1 October 2006) (continued)

JURISDICTION: NORTHERN TERRITORY

EMPLOYERS' RESPONSIBILITIES	WORKERS' RESPONSIBILITIES	INCENTIVES FOR NEW EMPLOYERS OF INJURED WORKERS
<ul style="list-style-type: none"> > take all reasonable steps to provide injured worker with suitable employment and participate in retaining 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: – s75A(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 > 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 during the first 12 months of the work placement

Return to work provisions (as at 1 October 2006) (continued)		
JURISDICTION: AUSTRALIAN CAPITAL TERRITORY		
EMPLOYERS' RESPONSIBILITIES	WORKERS' RESPONSIBILITIES	INCENTIVES FOR NEW EMPLOYERS OF INJURED WORKERS
<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 > If a worker fails to comply with their obligations, their weekly compensation payments may be stopped: – s113 	<p>Second injury arrangements are available to encourage the employment of injured workers: – s108(1)</p>
JURISDICTION: NEW ZEALAND		
EMPLOYERS' RESPONSIBILITIES	WORKERS' RESPONSIBILITIES	INCENTIVES FOR NEW EMPLOYERS OF INJURED WORKERS
<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>

UNINSURED EMPLOYERS

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. The table below outlines the uninsured employer's provisions in each jurisdiction.

Jurisdiction	Uninsured Provisions (as at 1 October 2006)
Commonwealth	<p>Comcare: No provision within the 'premium' (Commonwealth and ACT Public Sector) component of the scheme. 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>Seacare: The Seafarers Safety Net Fund which all scheme employers contribute to on a per-berth basis provides for any uninsured claims arising from the scheme.</p>
Victoria	Uninsured Employers and Indemnity Scheme (UEIS). Victoria WorkCover Authority 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> .
New South Wales	Uninsured Liability and Indemnity Scheme (ULIS). The employer is required to repay the amount spent on the claim and legal expenses, plus penalties incurred for not maintaining a workers' compensation insurance policy: – s145
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), the Corporation 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 the Corporation shall take all reasonable steps to recover the debt: – s48</p>
Western Australia	Where an employer is uninsured, WorkCover WA may sue and recover the amount paid to the injured worker from the General Account (uninsured fund) 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: – s174, s174AB
Queensland	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
Tasmania	Employer shall pay any amount required under the Act (including costs incurred or moneys expended in the conduct of the claim). The employer may be ordered to pay avoided premiums in addition to any fine the court may impose. The Nominal Insurer will attempt to recover the amount paid in relation to the claim from the employer or insurers involved: – s130
Northern Territory	Employer shall pay any amount required under the Act (including costs incurred or moneys 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)
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. A claim for payment must be made not later than 1 month after the day the person becomes eligible to make the claim or any further time that the DI Fund Manager, application, allows – s170A.</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> <p>(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, A (Employment connection with ACT or State); and</p> <p>(b) the employer had insurance, or was registered, as required under a law of the State in relation to liability for workers compensation under the law of the State – s149</p>
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>A person who is required to deliver any statement, document, or other information under s241 and who intentionally fails to do so commits an offence against this Act, and is liable to the penalty specified in s315, ref 242</p>

DISPUTE RESOLUTION

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* (see Glossary) 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.

The table below outlines the dispute resolution processes in each jurisdiction.

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

Jurisdiction	Dispute resolution (as at 1 October 2006)
Commonwealth	<p>Comcare: Following an internal reconsideration process (s62), if either party 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.</p> <p>Appeals: A party may apply from the AAT to the Federal Court on questions of law: – s64</p> <p>Seacare: Following a reconsideration process which may involve the assistance of an industry panel, or Comcare officer, if either party to a reconsidered decision is not satisfied with that decision an application to the Administrative Appeals Tribunal (AAT) may be made (a dispute): – s88-s91</p> <p>Reconsideration: a claimant who is dissatisfied with an employer’s determination can request a reconsideration.</p> <p>The employer with the assistance of an industry panel, or Comcare officer, must reconsider the determination, and decide whether to affirm, revoke or vary the determination in such a manner the employer thinks fit: – s79</p> <p>Appeals: Should a dispute still exist after the reconsideration process, then the claimant may apply to the AAT for review of such a decision: – s88-s91</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: Any party to a dispute may refer the dispute for conciliation to attempt to resolve the dispute: – 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 & s57</p> <p>A direction of a conciliation officer is binding on the parties unless subsequently revoked by that 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: – s58</p> <p>The Magistrates’ Court deals with claims up to \$40,000 and claims for arrears of weekly compensation up to 130 weeks. The County Court deals with all other claims: – s43</p> <p>Appeals: Appeals against a Medical Panel opinion are by way of administrative law review or judicial review to the Supreme Court.</p> <p>Appeals from decisions of the Magistrates’ Court are to the Supreme Court. Appeals from the County Court are to the Court of Appeal: – s51(2)</p> <p>Medical Panels: During the conciliation process, a conciliation officer may refer medical questions to a Medical Panel: – s56. The County Court and the Magistrates’ Court are required to refer medical questions to a Medical Panel if requested by either party: – s45</p> <p>A Medical Panel is not bound by rules of evidence but may inform itself as it thinks fit: – s65</p> <p>The opinion of a Medical Panel is final and conclusive: – s68</p>

Jurisdiction	Dispute resolution (as at 1 October 2006) (continued)
New South Wales	<p>Disputes: The Workers Compensation Commission (the Commission) is an independent Statutory Tribunal, which deals with disputed workers' compensation claims (except for coal miners).</p> <p>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>The District Court has exclusive jurisdiction to examine, hear and determine all coal miner matters (except matters arising under Part 5 of the 1987 Act).</p> <p>Appeals: 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 Panel: AMS are appointed to assess medical disputes.</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>Arbitration: Arbitration is conducted by an arbitration officer who did not preside at the conciliation proceedings. After a formal hearing at which the parties attend, a decision is handed down that binds both sides, subject to an application for judicial determination (re-hearing): – s93-s94</p> <p>Judicial Determination: A hearing is before one 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>
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 Workers' Compensation (DRD) Rules 2005 (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>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 disability under Schedule 2: – s210(1)</p>

Jurisdiction	Dispute resolution (as at 1 October 2006) (continued)
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-COMP considers appropriate: – s545</p> <p>Appeal to Industrial Magistrate or Industrial Relations Commission: Formal hearing of both sides, where the register 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>
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 & 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</p> <p>Claimant is not entitled to commence court proceedings unless an attempt of resolution had been made through mediation: – s103J(1)</p>

Jurisdiction	Dispute resolution (as at 1 October 2006) (continued)
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>
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. Levy payers can also ask for a review of any levy paid or payable <p>Reviews are conducted by an independent reviewer. 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.</p>

COMMON LAW ACCESS

COMMON LAW ACCESS

Before the introduction of statutory workers' compensation schemes, injured workers had to sue their employers under *common law* (see Glossary) 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, to reduce costs for all parties involved, access to common law has been significantly restricted with the introduction of statutory workers' compensation schemes, and negligence by an employer has to be proven before any common law action can succeed.

Some jurisdictions have:

- > abolished the right to access common law or
- > introduced *threshold tests* (see Glossary) and/or
- > placed restrictions on *types of damages* (see Glossary) 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.

The tables below outlines the access to common law in each jurisdiction.

Common law provisions (as at 1 October 2006)			
JURISDICTION: COMMONWEALTH			
ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
Yes (limited)	If compensation is payable under the permanent impairment provisions and the employer is liable for damages, the worker is able to make an irrevocable election to take action for damages: – s45 [Seafarers Act s55]	<p>Where an injury has resulted in the employee's death, the dependant of that employee is able to take a damages action against the Commonwealth - s44(3).</p> <p>Damages include any non-economic loss, including pain and suffering, suffered by the worker. Such a damages award does not affect other entitlements, such as weekly benefits, medical costs etc.</p> <p>A worker is able to take action for damages against third parties, subject to the laws of the relevant State/Territory legislation.</p>	Damages shall not exceed \$110,000 [\$138,570.52 under Seacare]. These amounts are not indexed.

Common law provisions (as at 1 October 2006) (continued)

JURISDICTION: VICTORIA

ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
Yes	<p>For a worker to obtain common law damages they 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"> 1. During the impairment assessment process, be assessed as having a whole person impairment of 30% or more (can combine physical and mental impairments); or 2. 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)) <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 the worker must prove they have suffered and will continue to suffer a loss of earning capacity of 40% or more: – s134AB(37) & s134AB(38)</p>	<p>Damages for pain and suffering and/or economic loss may be pursued. There are additional requirements to prove a permanent loss of 40% earning capacity to be able to pursue economic loss damages: – s134AB</p> <p>If pain and suffering damages are awarded the amount must be reduced by any lump sum impairment benefit paid: – s134AB(36)</p> <p>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>There is a continued right to medical and like expenses if damages are paid: – s99(13)</p>	<p>Damages for pain and suffering must not be awarded if the amount is less than \$45,590: – s134AB(22)</p> <p>Maximum amount for pain and suffering damages is \$462,720: – s134AB(22)</p> <p>Damages for economic loss must not be awarded if the amount is less than \$47,210: – s134AB(22)</p> <p>Maximum amount for economic loss damages is \$1,062,800: – s134AB(22)</p>

Common law provisions (as at 1 October 2006) (continued)			
JURISDICTION: NEW SOUTH WALES			
ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
Yes	<p>To be eligible to take action under common law, three criteria must be met:</p> <ul style="list-style-type: none"> > worker must demonstrate negligence of the employer or a fellow worker > worker must have a permanent impairment that is at least a 15% whole person impairment; and > 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>Damages are paid as one lump sum, to cover past and future economic loss only. Damages can be reduced if the worker's own negligence contributed to the injury: – Part 5, Division 3</p>	<p>A common law settlement cancels all other entitlements to workers' compensation benefits: – Part 5, Division 2</p> <p>If a common law claim is not successful, the worker will continue to receive workers' compensation under the statutory scheme.</p>
JURISDICTION: SOUTH AUSTRALIA			
ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
No			
JURISDICTION: WESTERN AUSTRALIA			
ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
Yes	<p>As of 14 November 2005 access to common law is based on the worker's degree of WPI. The threshold for accessing common law is not less than 15% WPI. Secondary psychological, psychiatric and sexual conditions are excluded: – Part IV, Subdivision 3</p> <p>Causes of action that occurred before 14 November 2004 are dealt with under the old common law provisions: – Part IV, Subdivision 2 – s93D & s93E</p>	<p>A worker has the right to obtain damages, however damages shall be reduced by the amount of compensation paid to the worker.</p>	<p>Where a worker has a WPI of less than 25% the maximum amount of damages that may be awarded is \$319,349 (indexed annually): – s93K</p> <p>Unlimited common law is available to a worker with a WPI of greater than 25%.</p>

Common law provisions (as at 1 October 2006) (continued)

JURISDICTION: QUEENSLAND

ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
Yes	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	A worker has the right to seek common law damages, however these are reduced by the amount of compensation paid to the worker.	Unlimited.

JURISDICTION: TASMANIA

ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
Yes: – s133	A worker must suffer at least 30% WPI before he or she can elect to commence proceedings for an award of damages.	A worker has the right to obtain damages, however damages shall be reduced by the amount of compensation paid to the worker.	–

JURISDICTION: NORTHERN TERRITORY

Common law rights against employer or fellow worker abolished for injuries occurring after 1 January 1987.

JURISDICTION: AUSTRALIAN CAPITAL TERRITORY

ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
Yes: – s184	–	Damages received can repay workers' compensation payments.	Unlimited, outside of workers' compensation scheme.

JURISDICTION: NEW ZEALAND

ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
People do not have the right to sue for personal injury, except for exemplary damages.	No threshold	These damages are punitive, and aimed at punishing the conduct of the offender. They are not intended to compensate for the injury	–

CROSS-BORDER PROVISIONS

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* (see Glossary).

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 considering:

- a. The Territory or State where the worker usually works in the employment or
- b. If not identified through (A) – the Territory or State where the worker is usually based for the purposes of the employment; or
- c. If not identified through (A) or (B) – the Territory or State where the employer's principal place of business in Australia is located

If the above provisions do not identify the Territory or State of connection, the worker is considered to be connected with the Territory or State if:

- > The worker is in the Territory or State when injured; and
- > The worker is not entitled to compensation in relation to the injury under the workers' compensation law of an external Territory, or place outside Australia

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.

The tables below shows the cross-border provisions in each jurisdiction.

Jurisdiction	Cross-border provisions (as at 1 October 2006)
Commonwealth	<p>Comcare: 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>
Victoria	<p>National cross-border model implemented from 1 September 2004.</p> <p>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.</p>
New South Wales	National cross-border model implemented on 1 January 2006.
South Australia	<p>As at 1 October 2006, there were no formal cooperative arrangements with other jurisdictional compensation authorities.</p> <p>It should be noted that the National cross-border model commenced in South Australia on 1 January 2007.</p>
Western Australia	National cross-border model implemented 22 December 2004.
Queensland	National cross-border model implemented as at 1 July 2003.
Tasmania	National cross-border model implemented from December 2004.
Northern Territory	Cross-border arrangements are expected to be passed in the February 2007 sittings of the Northern Territory Legislative Assembly with arrangements to commence in April 2007.
Australian Capital Territory	National cross-border model implemented on 3 June 2004.
New Zealand	The ACC scheme covers New Zealand residents for the first six months that they are outside of New Zealand jurisdiction. Additional cover can be purchased for up to 24 months.

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 genuinely work related claims will be accepted
- > remove workers' compensation coverage for journeys and from recess breaks where there is a lack of employer control over work activity
- > 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 \$9,000) and an increase to weekly benefits paid to retired employees.

The amendments are similar to those that have been made in other schemes and make a clearer link between what is in the employer's control and responsibility and compensation. These improvements will better align the SRC Act to the duties of employers and employees under the *Occupational Health and Safety (Commonwealth Employees) Act 1991*.

VICTORIA

From 1 July 2006, the entitlement period to receive weekly payments has been extended from 104 to 130 weeks before a worker will then be assessed as have an ongoing entitlement or not based on their work capacity s93CB. Weekly payment rates for partially incapacitated workers have been increased to payment of the difference between 75% pre-injury earnings and 75% notional earnings, up from 60%. Payment of no fault lump sum benefits has been expedited. Workers no longer have to have their whole person impairment assessed first before they can apply for 'serious injury' status to pursue common law. Workers are now paid their lump sum benefit and the amount is later deducted from any pain and suffering damages awarded, so workers no longer have to elect to receive the lump sum and forego pain and suffering damages.

NEW SOUTH WALES

From 1 January 2006, employers are only required to maintain a workers compensation policy in NSW when they have workers with a 'State of Connection' in NSW.

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.

Queensland, Victoria, Western Australia, Tasmania, the Australian Capital Territory and South Australia have also introduced cross border provisions that allow workers to work across their borders for temporary periods, under an existing NSW workers compensation policy.

SOUTH AUSTRALIA

Territorial Provisions

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 brings South Australia's territorial provisions into line with those of the other states, as part of a national model of territorial/cross-border legislation.

The new legislation will benefit employers by ensuring that they only have to pay into one workers compensation system for each worker, irrespective of temporary movements interstate.

In relation to injured workers, every worker will be covered by a scheme, so no worker or their dependants will be denied compensation due to 'falling between the cracks' in states' workers compensation systems. Limited retrospectivity and 'ex gratia' payment provisions are included in the legislation to ensure people who have fallen through the cracks previously are not forgotten.

The state or territory scheme to which a worker will be connected is decided by the following tests, in order:

- a. where a worker usually works
- b. where they are usually based
- c. where the employer's principal place of business is located
- d. where the injury happens.

Please note that the amendments feature limited 'retrospective' and 'ex gratia' payment provisions for workers injured before 1 January 2007, to ensure that those who previously 'fell through the cracks' are not forgotten. These particular provisions did not come into force on 1 January, as further work was required to prepare for their commencement.

Domestic Partners

The *Statute Amendment (Domestic Partners) Act 2006*, assented to by Parliament on 14 December 2006 and yet to come into operation on a day to be fixed by proclamation, amends the *Workers Rehabilitation and Compensation Act 1986 (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 3 years or variations thereof.

The Domestic Partners Act changes the interpretation ([section 3](#)), compensation payable upon death ([section 44](#)) and transitional provisions ([Schedule 1](#)) within the WRC Act.

Specifically, the Act includes a definition of close personal relationship within [section 3](#) of the WRC Act to mean the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis and the definition of domestic partner. Further, it amends two other definitions of relative to include a reference to domestic partner and amends the definition of spouse.

In circumstances where compensation is payable upon death the WRC Act has been expanded to include references to domestic partners - not only spouses.

A copy of the Domestic Partners Act may be found on the website of the Attorney-General's Department, [South Australian Legislation](#).

Retirement Provisions

On 26 September 2006, the Minister for Industrial Relations, the Hon Michael Wright, released a draft Bill to stakeholders for consideration on amendments to the existing retirement age provisions in the *Workers Rehabilitation and Compensation Act 1986*.

The Bill aims to extend the period of weekly payment from six months to two years.

The Minister is considering the responses to the consultation before progressing with the Bill.

WESTERN AUSTRALIA

In late 2004, the State Government gave an undertaking that an evaluation of the “impact of the legislative reforms” associated with the *Workers’ Compensation Reform Act 2004* would be undertaken after a full financial year of operation. The responsibility for undertaking the evaluation lies with WorkCover WA.

Obtaining feedback from stakeholder groups is an intrinsic aspect of the evaluation process and WorkCover WA is reviewing stakeholder submissions in order to prepare a report for the Government. The outcomes of the evaluation will be a major input into a full legislative review and development process due to commence in May 2007, with WorkCover WA seeking further stakeholder and public comment at that time.

QUEENSLAND

The *Workers’ Compensation and Rehabilitation Act 2003* was amended in March 2006 to protect the original objectives of the Medical Assessment Tribunals (MATs) and to ensure their independent and non-adversarial role. The amendment was subsequent to a Queensland Court of Appeal decision which held that self-insurers had a right to hear, see and comment on submissions made to MATs. Some of the implications arising out of this decision included protracted delays for the processing of cases and increased expenses for insurers and employers.

The *Workers’ Compensation and Rehabilitation Act 2003* was again amended in May 2006 to transfer from the *Queensland Industrial Relations Act 1999* to the *Workers’ Compensation and Rehabilitation Act 2003* the protection, for twelve months, for workers who have sustained a work-related injury or disease from dismissal solely or mainly because the worker is not fit for employment.

TASMANIA

There are no recent developments on the workers’ compensation scheme in the Tasmania.

NORTHERN TERRITORY

There are no recent developments on the workers’ compensation scheme in the Northern Territory.

AUSTRALIAN CAPITAL TERRITORY

The *Workers Compensation Amendment Act 2006 (No. 4 of 2006)* commenced on 1 July 2006 and combines the previous safety net provisions in the *Workers Compensation Act 1951* and repealed the *Workers Compensation Supplementation Fund Act 1980*. The amending Act also established a scheme for certificates of currency, which must set out the details provided by the employer to an approved insurer and the period for which the employer is being insured under the workers' compensation policy. Upon request by an authorised person, including an Inspector and a union representative, it is an offence for the employer to fail to produce the requested certificate.

The *Workers Compensation Amendment Act 2006 (No. 8 of 2006)* also commenced on 1 July 2006 and provides that the Minister may, unilaterally or upon application, deem Territory family day care and in-home care carers to be workers for the purposes of the Act. The Act also rectifies an anomaly in relation to pre-incapacity weekly earnings, including rehabilitation treatment, and enables access to workers' compensation for women up to 65 years.

NEW ZEALAND

Medical misadventure has been renamed to treatment injury. The employer and self-employed worker accounts are being merged.

GLOSSARY

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: government run schemes of workers' compensation (see also privately underwritten 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

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

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

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

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

Levy: the term used in South Australia and New Zealand for Premiums (See Premiums)

GLOSSARY (continued)

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

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

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

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

Threshold test: a level of impairment an injured worker must reach

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

JURISDICTIONAL RESPONSIBILITY

Jurisdictional responsibility for workers' compensation

Jurisdiction	Policy	Premium	Claims	Disputes
Commonwealth	Department of Employment and Workplace Relations and Comcare	Comcare	Comcare and for self insurers, the employers	Comcare, AAT, Federal Court
Victoria	Victoria WorkCover Authority (VWA)	VWA	Private sector agents	VWA, Accident Compensation Conciliation Service (ACCS), Magistrates' or County Court
New South Wales	WorkCover NSW	WorkCover NSW	Private sector agents For self and specialised insurers, the employer	WorkCover NSW, Workers Compensation Commission,
South Australia	WorkCover SA	WorkCover SA	Employers Mutual	Workers Compensation Tribunal
Western Australia	Department of Consumer and Employment Protection – WorkCover WA	WorkCover WA Authority	Private sector agents	WorkCover WA (Dispute Resolution Directorate), Compensation Magistrate's Court, Supreme Court
Queensland	Department of Industrial Relations	WorkCover Queensland	WorkCover Queensland, Self-insurers	Q-COMP, Industrial Magistrate, Industrial Relations Commission Industrial Court
Tasmania	Department of Justice	Claims agents (suggested by WorkCover Tasmania) Insurers licensed by WorkCover Tasmania	Licensed insurers	Workers Rehabilitation and Compensation Tribunal, Workers Compensation Commissioner, Supreme Court
Northern Territory	Department of Employment, Education & Training	Private sector agents	Private sector agents	NT WorkSafe (mediation), Work Health Court
Australian Capital Territory	Office of Industrial Relations	Private sector agents	Private sector agents	Conciliation, arbitration
New Zealand	Department of Labour	Accident Compensation Corporation	Accident Compensation Corporation	Accident Compensation Corporation, mediation, Dispute Resolution Services Limited, court system

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