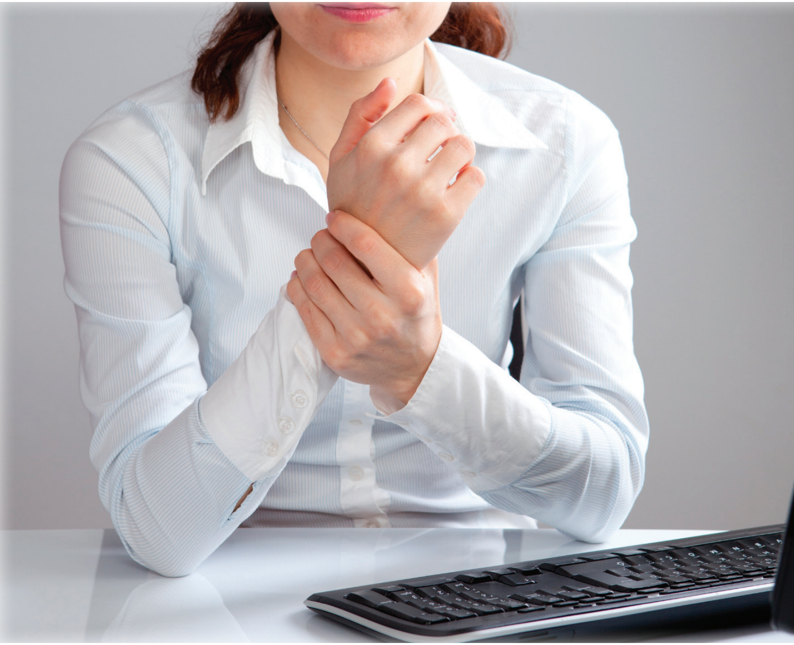
Key Workers' Compensation Information, Australia



safe work australia

2013

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Key Workers' Compensation Information, Australia 2013

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Contents

Background

- Australian workers' compensation systems were originally based on nineteenth century British law. Before the implementation of modern workers' compensation arrangements, an injured worker's only means of receiving compensation was to sue their employer for negligence at common law.
- The basic principle behind workers' compensation is that as it is employers that profit from the labour of others, they should bear the full cost of that labour, including costs associated with work-related injury. Injury in this sense includes the full range of physical injuries, ailments, illnesses, aggravation or acceleration of pre-existing injuries.
- All Australian jurisdictions have workers' compensation laws that are 'no fault'. That is to be eligible, workers only have to prove that their injuries were work related - they do not need to prove negligence on the part of an employer.
- There are 11 major workers' compensation systems in Australia. Each of the six Australian States and both Territories have developed their own workers' compensation laws and the Commonwealth has three schemes: the first is for Australian Government employees and the employees of licensed authorities, the second for certain seafarers, and the third for Australian Defence Force personnel under the *Military Rehabilitation and Compensation Act*.
- With the exception of the Australian Capital Territory, the information presented in this booklet provides a snapshot of workers' compensation arrangements as at 30 September 2012. The Australian Capital Territory has arrangements as at 30 June 2012.

What is workers' compensation?

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

to meet all of their claim liabilities. They are still required to pay a levy towards administering the scheme.

- Schemes currently cover 88% of the workforce (~ 9.99 million workers).
- The schemes do not cover the self employed, sole traders and independent contractors (about 1.36 million people) who need to take personal injury insurance through private sector insurance.

What is an injured worker entitled to?

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

Who is eligible?

- Australia’s schemes are no fault schemes — that is an injured worker does not need to prove negligence on the part of the employer.
- There are three preconditions to receiving compensation:
  - the worker is an employee as defined in the law of their jurisdiction
  - the worker has a medical condition that was diagnosed by a qualified practitioner who stated that the condition arose out of *or* in the course of employment, and
  - the worker has suffered a financial loss (such as loss of income

or has incurred medical costs).

- Workers' compensation is *not* given for general 'harm', such as hurt feelings or emotional distress or as the result of discrimination.

What does it cost?

- In 2010–11 there were 127 330 serious workers' compensation claims involving one or more weeks of time lost from work, a permanent incapacity or fatality. This equates to 12.2 claims for serious injury for every 1000 employees.
- In 2010–11 the total amount paid by workers' compensation schemes was $7.4 billion. This consisted of:
  - $4.09 billion of direct payments (incapacity, permanent impairment and common law) (54.9%)
  - $1.71 billion in medical and other services, including rehabilitation (22.9%)
  - $1.31 billion of insurance operations costs (17.6%), and
  - $343 million of other administrative costs (4.6%).
- Premiums are usually expressed as a percentage of the employer's payroll. The standardised average Australian premium in 2010–11 was 1.49%. However, for individual employers premiums can be as high as 12.2% for certain high risk trades or lower than 0.2% for low risk work.
- Self-insurance allows employers to manage their own workers' compensation liabilities, provided that they can prove they are capable of doing so by having effective management systems and are financially viable.

More information on workers' compensation premiums can be found in the 14th edition of the *Comparative Performance Monitoring report*.

For further information on the tables presented in this booklet, or workers' compensation in general, please refer to the *Comparison of Workers' Compensation Arrangements, June 2013.*

For an explanation of the acronyms used in this booklet please refer to the glossary on page 27

Agencies responsible for workers' compensation functions

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

Table 1 — Responsible Agencies

Jurisdiction	Policy / Regulator	Premium	Claims	Disputes
New South Wales	WorkCover NSW for both	WorkCover NSW	7 private sector agents, 59 self-insurers, 7 specialised insurers and SICorp for most public sector employers	Workers' Compensation Commission
Victoria	WorkSafe Victoria (Victorian WorkCover Authority) for both	WorkSafe Victoria	5 private sector agents and 38 self-insurers	WorkSafe Victoria, Accident Compensation Conciliation Service (ACCS), Medical Panels, Magistrates' or County Court
Queensland	Dept. of Justice and Attorney-General / Q-COMP	WorkCover Queensland	WorkCover Queensland and 25 self-insurers	Q-COMP, Queensland Industrial Relations Commission or Industrial Magistrate, Industrial Court
Western Australia	WorkCover WA for both	Insurers subject to WorkCover WA oversight	8 private sector insurers, 27 self-insurers (exempt employers) and the Insurance Commission of WA	Concilliation and Arbitration Services

South Australia	WorkCover SA for both	WorkCover SA	1 private sector agent, 66 self-insurers and 56 Crown self-insurers	Workers' Compensation Tribunal, Medical Panels SA, WorkCover Ombudsman
Tasmania	Dept. of Justice WorkCover Tasmania	Licensed private sector insurers, subject to WorkCover Tasmania oversight	7 private sector insurers and 11 self-insurers	Workers' Rehabilitation and Compensation Tribunal, Supreme Court
Northern Territory	Dept. of Business NT WorkSafe	Private sector insurers	5 private sector insurers	Mediation coordinated by NT WorkSafe, Work Health Court
ACT Private	WorkSafe ACT, Justice and Community Services Directorate ACT WorkCover	Private sector insurers	7 approved insurers and 7 self-insurers	Conciliation, Arbitration, Magistrates Court, Supreme Court
C'wealth Comcare	Dept. of Education, Employment & Workplace Relations	Comcare	Comcare / self-insurers and their agents	AAT, Federal Court
C'wealth Seacare	Dept. of Education, Employment & Workplace Relations	Private sector insurers	Employers / insurers	AAT, Federal Court
C'wealth DVA	Military Rehabilitation & Compensation Commission	N/A	DVA	Military Rehabilitation & Compensation Commission

Legislation

Each jurisdiction has its own legislation covering workers' compensation.

Table 2 — Workers' Compensation Legislation

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

Statistics

The table below lists important statistical data for the jurisdictions.

Table 3 — Australian Workers' Compensation Statistics, 2010–11

Jurisdiction	Employees Covered	Fatalities	Serious Claims[1]	Incidence Rate[2]	Frequency rate[3]	Durable RTW Rate[4]	Dispute Rate[5]	Standardised Average Premium Rate
New South Wales	3 165 700	44	43 280	13.7	8.1	78%	3.9%	1.76%
Victoria	2 643 300	24	23 760	9.0	5.5	76%	10.0%	1.35%
Queensland	1 965 200	34	28 910	14.7	9.0	76%	3.1%	1.22%
Western Australia	1 094 100	29	13 110	12.0	7.0	N/A	3.1%	1.14%
South Australia	729 700	13	9 000	12.3	7.6	70%	6.6%	2.49%
Tasmania	209 000	4	3 270	15.6	10.2	80%	5.9%	1.50%
Northern Territory	115 000	3	1 290	11.2	6.2	77%	5.0%	1.79%
ACT	132 300	1	1 720	13.0	8.3	N/A	N/A	2.05%
Comcare	377 800	17	2 790	7.4	4.1	81%	3.4%	0.92%
Seacare	4 800	0	200	41.8	9.7	74%	17.8%	3.49%
Australia	**10 437 000**	**169**	**127 330**	**12.2**	**7.3**	**77%**	**4.8%**	**1.49%**

1. Serious claims include all claims for which one or more weeks of compensation has been recorded (excluding journey claims).
2. Incidence rate of serious injuries (the number of claims per 1000 employees, projected 2010–11*).
3. Frequency rate of serious injuries (the number of claims per million hours worked, projected 2010–11*).
4. The durable return to work (RTW) rate is the proportion of injured workers who have returned to work and were still working at the time of interview in a survey conducted by Campbell Research and Consulting, seven to nine months after their claim.
5. A new definition for dispute rate, which is designed to improve comparability between jurisdictions was implemented in CPM 14. The number of active claims in the reference financial year rather than new claims lodged in the reference financial year are used to calculate disputation rates.

*Preliminary claims are projected based on previous year's growth rate.

Work-related injury

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

Table 4 — Injury and contribution of employment

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

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

Journey claims

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

Table 5 — Coverage of journey claims

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

Main benefits

Important notes:

- The level and degree of entitlements in the accompanying tables are stated for illustrative purposes. These will not automatically apply to every injured employee and similarly not every injured employee will have his or her entitlement limited to one component.
- Amounts of compensation, other than for lump-sum payment to dependants in the case of work related death or permanent impairment, will be based on the degree of financial loss a employee suffers as a result of a work-related injury.
- The amount of financial loss, including lost income, is determined differently in each jurisdiction.

What are the incapacity benefits?

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

Table 6 - Incapacity payments as at 30 September 2012

Jurisdiction	100% wage replacement (weeks)	Final step down (after week ...)	Minimum amount after final stepdown	Variation	Employer Excess	Financial Limit	Time limit	Age limit
New South Wales	26	26	The lesser of 90% AWE or $432.50	More for dependants, less capacity to earn	One week's weekly compensation	$1838.70 per week	—	Retirement age + 12 months
Victoria	13 (95% PIAWE replacement) or maximum, whichever lesser	13	80% PIAWE	If work capacity less than current weekly earnings	First 10 days, first $629 medical costs	$2000 per week	130 weeks unless no current work capacity	65 unless lower industry retirement age. If injured within 130 weeks of retirement, max. 130 weeks
Queensland	26 Award: greater of 85% NWE, or amount payable under industrial instrument No award: greater of 80% QOTE, or 85% NWE	104	Greater of 75% NWE or 70% QOTE	Subject to working under industrial award	Up to first $1330.50 weekly	Until weekly compensation totals $287 605	5 years	—
Western Australia	13	13	85% AWE	Subject to award rates	No	$2351.80 per week	—	Age restrictions removed on 1 October 2011
South Australia	13	26	80% AWE	Subject to work capacity review - if not maximising then payments may cease	First two weeks of the period of incapacity.	$2589.40 per week ($2604.40 as at 16/10/2012)	130 weeks unless no current & continuing work capacity	If injured within 2 years of retirement, regardless of age, max 2 years

Tasmania	26	78	80% NWE (or 85% if employer fails to provide suitable duties)	—	First weekly payment, first $200 of other benefits	—	9 years (more for WPI>15%)	65 unless worker is over 64 at time of injury, then max 1 year
Northern Territory	26	26	75% NWE (up to 90% for low income earners)	More for dependants, less capacity to earn	First day	$2012.90 per weeks (> 26 weeks)	—	65 years or 104 weeks if worker aged 63 or more at time of injury. If injury occurs after 66.5 years, then max 26 weeks
ACT Private*	26	26	65% of pre-injury earnings or statutory floor	More for dependants, less capacity to earn	Employers liable until insurer notified.	—	—	65 unless worker is over 63 years at time of injury, then max 2 years
C'wealth Comcare	45	45	Lesser of 75% of NWE or statutory amount ($425.72)	More for dependants, less capacity to earn	No	150% of AWOTEFA ($2029.05)	—	65 unless worker has reached 63 years at time of injury, in which case max 104 weeks
C'wealth Seacare	45	45	Lesser of 75% of NWE or statutory amount ($412.92)	More for dependants, less capacity to earn	No	150% of AWOTEFA ($2029.05)	—	65 unless worker injured after 64 at time of injury, then max 1 year
C'wealth DVA	45	45	75% of NWE	—	No	No maximum	—	65 unless worker has reached 63 years at time of injury, in which case max 104 weeks

* as at 30 June 2012.

1. If the work related impairment is over 15%.

Medical treatment benefits

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

Table 7 — Maximum amounts for medical treatment as at 30 September 2012

Jurisdiction	$ limit	Other
New South Wales	No limit	$50 000 or greater amount prescribed or directed by Workers' Compensation Commission
Victoria	No limit	Ceases 52 weeks after weekly payment entitlement ceases, or if compensation is payable only for medical and like services 52 weeks after the entitlement commenced
Queensland	No limit	Payment of expenses stops when compensation ceases
Western Australia	$59 510	Additional $50 000 where the worker's social and financial circumstances justify it. In exceptional medical circumstances (along with > 15% WPI) a further $250 000 (capped) may be granted for additional medical expenses
South Australia	No limit	—
Tasmania	No limit	Ceases 52 weeks after weekly payments cease, or after 52 weeks if compensation is payable only for medical and like services
Northern Territory	No limit	—
ACT Private*	No limit	Costs are as agreed with the insurer or $662.61 indexed
C'wealth Comcare	No limit	—
C'wealth Seacare	No limit	—
C'wealth DVA	No limit	—

* as at 30 June 2012.

Permanent impairment entitlements

Some work-related injuries result in medical conditions that will never resolve, such as loss of a limb or chronic conditions. Jurisdictions provide lump sum payments for permanent impairment where the degree of impairment is above a threshold percentage. There may be additional amounts payable for other loss, such as pain and suffering, or caps on the amounts that could be obtained through the courts.

Table 8 — Permanent impairment thresholds and entitlements as at 30 September 2012

Jurisdiction	% of impairment	Lump Sum	Additional conditions
New South Wales	For exempt workers like police officers: >0% WPI (except for binaural hearing loss 6% and primary psychological injury 15%) and for pain and suffering (physical injury 10% and primary psychological injury 15%) For all other workers' claims made on or after 19 June 2012: >10% WPI except for psychological injury	$220 000 plus additional 5% for PI of spine $50 000 for pain and suffering	Thresholds for claims for Common law damages 15%, and Commutation 15%
Victoria	10% WPI except for psychiatric impairments and additional 10% for further hearing loss 5% for some musculoskeletal injuries with a date of injury on or after 2 December 2003 30% for psychiatric impairment not secondary to physical injury	$543 920	—
Queensland	>0% WPI 5% hearing loss	$287 605 (standard) $603 985 (latent onset) (as at 1 July 2012)	If 30% + up to $287 605 If 15% + up to $325 800 (gratuitous care)

Table 8 — Permanent impairment thresholds and entitlements as at 30 September 2012 continued

Jurisdiction	% of impairment	Lump Sum	Additional conditions
Western Australia	>0% WPI, except for 10% for initial noise-induced hearing loss and 5% for subsequent noise induced hearing loss	$198 365 + $148 774 in special circumstances	Additional expenses up to $250 000 if no less than 15% WPI Common law 15% WPI (limited) 25% WPI (unlimited)
South Australia	5% WPI	$457 739	—
Tasmania	5% WPI for physical injuries. >0% loss of all or part of fingers and toes 10% psychiatric impairment 5% binaural hearing loss caused by industrial deafness	$305 759	20% WPI for access to common law damages
Northern Territory	5% WPI Between 5%–14% WPI, compensation calculated on sliding scale Impairments of 15%-84% benefit equal to percentage given ≥ 85% WPI receives maximum	$292 989	—
ACT Private*	0% (no threshold) 6% hearing loss	$132 522 single $198 783 multiple	—
C'wealth Comcare	10% WPI 5% binaural hearing loss >0% finger/ toe, taste/smell	$168 605 (economic loss) $63 227 (non economic loss)	—
C'wealth Seacare	10% WPI 5% hearing loss >0% finger/toe, taste/smell	$168 605 (economic loss) $63 227 (non-economic loss)	
C'wealth DVA	Initial compensation — 10 impairment points (IP) 5 IPs for hearing, fingers, toes, taste and smell Additional compensation — 5 IPs	$410 123	$79 616 education. Free medical treatment. $1592 financial advice

* as at 30 June 2012.

Death entitlements

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

Table 9 — Death entitlements as at 30 September 2012

Jurisdiction	Lump sum	Weekly payments / child	Funeral	Other
New South Wales	$481 950 $291 040 (Dust Diseases)	$122.50 $127.60 (Dust Diseases)	$9000	$252.50 (dependant spouse; Dust Diseases)
Victoria	$543 920	First 13 weeks 95% of pre-injury earnings for dependant partner to max $2000 per week 14 weeks to 3 years 50% of earnings to max $2000 Range of payments for dependant children	$10 375	Counselling for family $5750 maximum
Queensland	$538 715 $14 395 for dependant spouse $28 780 for each other dependant family member, under 16 or a student	8% of QOTE ($106.45) for the spouse if there is a dependant family member under 6 and payment of 10% QOTE ($133.05) for each dependant under 16 or a student	Reasonable	—
Western Australia	$271 935 (subject to labour price index)	A child's allowance of $52 per week for each dependant child up to 16 or 21 if a student	Reasonable, not exceeding $9003	—

Table 9 - Death entitlements as at 30 September 2012 continued

Jurisdiction	Lump sum	Weekly payments / child	Funeral	Other
South Australia	$437 401 ($454 739 from 1 January 2012).	Orphaned child — 25% of deceased's NWE Not orphaned — 12.5% of deceased's NWE	$9602 (maximum as at 1 January 2012)	Dependant spouse — 50% of deceased's NWE (less if partially dependant)
Tasmania	$305 760	A dependant child is entitled to 15% of the basic salary, commencing on the expiration of 13 weeks after the date of death ($110.52 per week)	—	Dependant spouse is entitled to weekly payments calculated at the same rate as the deceased would have received if he/she became totally incapacitated • first 26 weeks: 100% of weekly payments • 26–78 weeks: 90% of weekly payments • 78 weeks-2 years: 80% of weekly payments
Northern Territory	$366 236 (260 x AWE) in prescribed proportions.	10% of AWE ($140.86) for each child under 16 or 21 if student (max 10 children)	10% of annual equivalent of AWE ($7325)	—
ACT Private*	$207 192	$69.06 per child	$5525	—
C'wealth Comcare	$475 963	$130.89 to each child under 16 (or 25 if full-time student)	$10 735	—
Comcare Seacare	$479 635	$131.90 per child under 16	$5838	
Comcare DVA	$659 752	$87.57 per child under 16 $3.10 MRCA supplement	$10 735	Reasonable medical expenses for spouse and children $1592 financial advice

* as at April 2012.

Common law

With the introduction of statutory 'no-fault' workers' compensation schemes, access to common law has been significantly restricted and the worker has to prove the employer's negligence before any common law action can succeed.

Some jurisdictions have abolished the right to access common law, introduced *threshold tests*, placed restrictions on the *types* of damages that an injured worker can receive, and/or placed caps on the amount of damages that can be awarded. If injured workers elect to pursue common law, they may have to reimburse their employer or WorkCover Authority for any statutory benefits paid out.

Table 10 — Access to Common Law as at 30 September 2012

Jurisdiction	Access	Type of damages	Threshold	Damages
New South Wales	Yes	Past and future economic loss of earnings	15% WPI	No cap
Victoria	Yes — limited (post 20 Oct 1999)	Pain & suffering, and/or economic loss	30% WPI or narrative test Additional requirement to prove a permanent loss of 40% earning capacity	Pain & suffering: min $53 600, max $543 920 Economic loss: min $55 480, max $1 249 310
Queensland	Yes	General damages (pain & suffering) and economic loss	WRI of less than 20% or none, worker must decide to accept lump sum payment or seek damages	Pain & suffering: $319 050 Economic loss: 3 X QOTE ($3991.50) per week for each week of lost earnings
Western Australia	Yes — limited	Economic and non-economic loss	Mininum 15% WPI	$416 569 (<25% WPI), no cap (min. >25% WPI)

Table 10 — Access to Common Law as at 30 September 2012 continued

Jurisdiction	Access	Type of damages	Threshold	Damages
South Australia	No	N/A	N/A	N/A
Tasmania	Yes — limited	Economic and non-economic loss	Min 20% WPI	Unlimited
Northern Territory	No	N/A	N/A	N/A
ACT Private*	Yes	Unlimited	Nil	Unlimited — outside of workers' compensation scheme
C'wealth Comcare and Seacare	Yes — limited	Employee: non-economic loss Dependant: economic and non-economic loss	Successful PI claim	$138 571
C'wealth DVA	Yes — limited	Damages for non-economic loss	Successful PI claim	Damages not to exceed $110 000

* as at 30 June 2012.

Return to work

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

Table 11 — Sections of the Act or Regulations referring to RTW as at September 2012

Jurisdiction	Sections of the Act or Regulations
New South Wales	Ch 3 — *Workplace Injury Management Act 1998* Part 6 2010 Regulations
Victoria	*Accident Compensation Act 1985* — Part VIIB (RTW)
Queensland	Act s220; s221; s228 Reg s101–110
Western Australia	Workers' Compensation Code of Practice (Injury Management (2005): cl1–9 Act: s3; s5(1); s64; s65 s72B; s84AA(1); s84AB; Part IX; Part IXA
South Australia	s26 to s28D
Tasmania	Part XI of the *Workers Rehabilitation and Compensation Act 1988*
Northern Territory	s75A and s75B Accredited Vocational Rehabilitation Providers S50
ACT Private*	Chapter 5 of the *Workers Compensation Act 1951*
C'wealth Comcare	*Safety, Rehabilitation and Compensation Act 1988:* s36-–s41A
C'wealth Seacare	s48 to s52 *Seafarers Rehabilitation and Compensation Act 1992*
C'wealth DVA	s37 to s64 *Military Rehabilitation and Compensation Act 2004*

* as at 30 June 2012.

Return to work: programs and policies

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

Table 12 — Requirement to have RTW / workplace rehabilitation program or policy as at September 2012

Jurisdiction	Employers required to have RTW program / policies?	Do requirements differ for different categories of employers?	Exemptions from RTW programs	Requirements for development of programs / policies (e.g. in consultation with workers)
New South Wales	Yes	Yes	Yes	Yes
Victoria	Yes	No	No	Yes
Queensland	Yes	Yes — high risk industries have a lower threshold to meet criteria for needing policies and procedures and a Rehabilitation and RTW Coordinator	Yes — No workplace rehabilitation policies or procedures needed in high risk industries with wages less than $1.98 million. All other employers with wages less than $6.51 million	No
Western Australia	Yes	No	No	No

South Australia	Yes — employers with 30 + employees	No	Yes — employers with <30 employees	Procedure must be signed off by person with authority to commit employer to procedure
Tasmania	Yes	No	No	Yes
Northern Territory	Not legislated	Not legislated	Not legislated	Not legislated
ACT Private*	Yes	No	No	Yes
C'wealth Comcare	Yes	No	No	Yes
C'wealth Seacare	No	N/A	No	In consultation with the employee, employer, rehabilitation provider and medical practitioner

* as at 30 June 2012.

Return to work: Injured worker placement incentives

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

Table 13 — Injured worker placement incentives as at September 2012

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

* as at 30 June 2012.

Glossary

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

Sources

All information on workers' compensation arrangements is derived from the annual publications *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2013* and the *Comparative Performance Monitoring Report 14th Edition* published by Safe Work Australia.

More detailed information on workers' compensation generally and links to web pages related to each jurisdiction is available on the Safe Work Australia website.

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